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TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1938

No. 704

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AMERICAN TOLL BRIDGE COMPANY, APPELLANT,

vs.

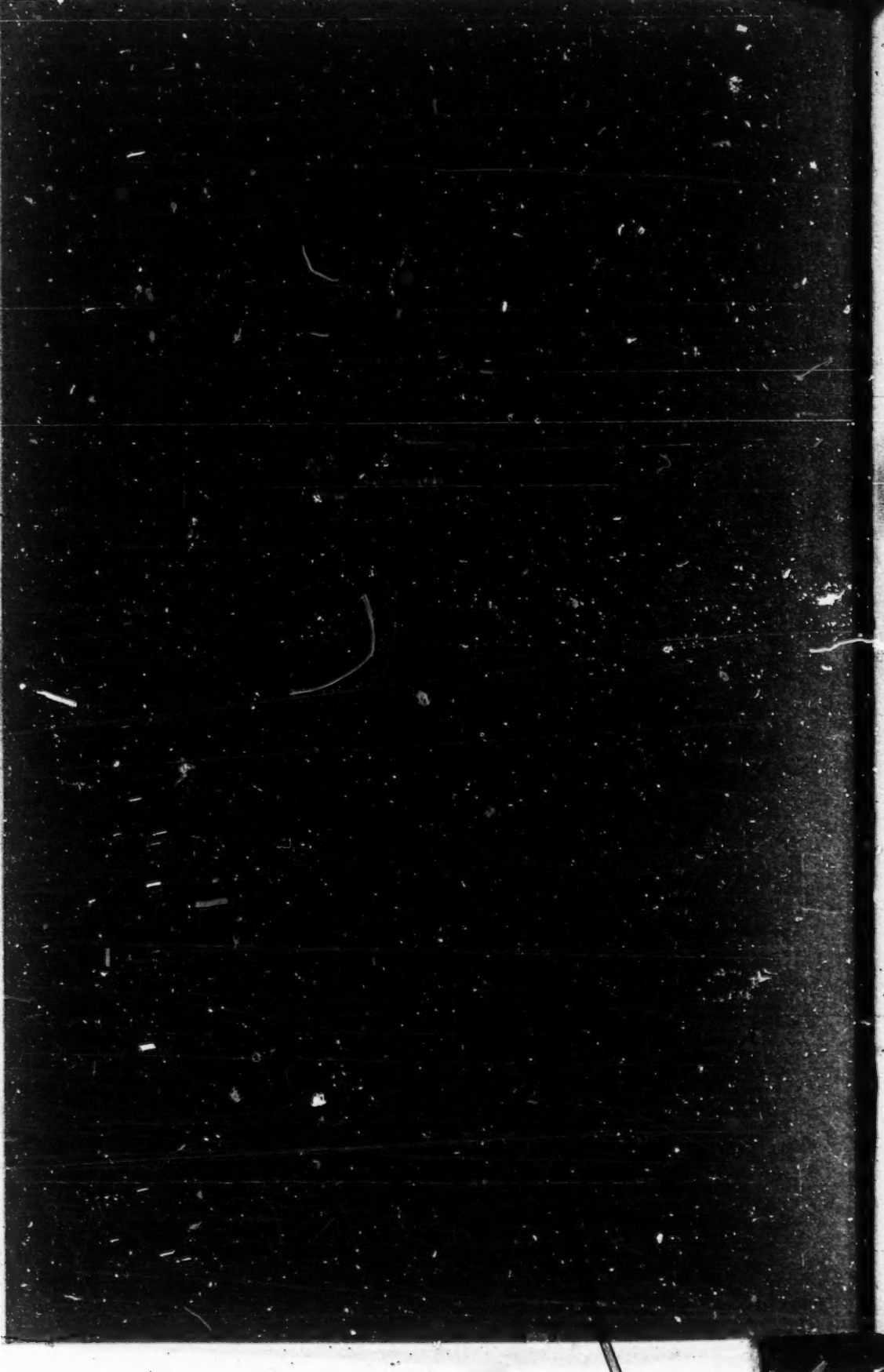
RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA ET AL.

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APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

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FILED FEBRUARY 25, 1939.





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RAILROAD COMMISSION OF THE STATE OF  
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[fol. 2] **SUPREME COURT OF THE UNITED STATES**

**AMERICAN TOLL BRIDGE COMPANY, a Corporation, Appellant,**

**vs.**

**RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, WALLACE L. WARE, Frank R. Devlin, Ray L. Riley, Ray C. Wakefield and Leon O. Whitsell as Members of and Constituting the Railroad Commission of the State of California, Appellee**

**JOINT PRAECIPE AND STIPULATION FOR TRANSCRIPT OF RECORD AND ORDER THEREON—Filed February 1, 1939**

To the Clerk of the Supreme Court of the State of California:

The parties above named in the above entitled cause join in this Praecipe and Stipulation for the preparation of the transcript of the record on appeal in said cause and you are requested to prepare a transcript of the record in said cause and to transmit the same to the Supreme Court of the United States at Washington, D. C., duly certified and authenticated and within the time prescribed by the rules of the Supreme Court of the United States, consisting of the following documents and portions of the record in said cause, which the said parties stipulate constitute the record [fol. 3] on appeal to the Supreme Court of the United States in said cause:

1. This Praecipe and Stipulation;
2. Petition of American Toll Bridge Company, a corporation, to the Supreme Court of the State of California for Writ of Review including the following exhibits attached thereto:

Exhibit "A"—Order of the Railroad Commission of California instituting investigation, Case No. 4244;

Exhibit "B"—Order of the Railroad Commission of California instituting investigation, Case No. 4259;

Exhibit "C"—Decision No. 30612 of the Railroad Commission of California, including Opinion and Order;

Exhibit "D"—Petition of American Toll Bridge Company for Rehearing;

Exhibit "E"—Order of Railroad Commission of California Denying Rehearing;

Memorandum of Points and Authorities in Support of Petition for Writ of Review; and

Affidavit of Will F. Morrish for Temporary Stay and for Suspension of Decisions and Orders of Railroad Commission During Pendency of Writ of Review;

3. Order of the Supreme Court of California Granting Temporary Stay of Decisions and Orders of Railroad Commission;

4. Suspending Bond on Temporary Stay;

[fol. 4] 5. Order to Show Cause Why Operation of Decisions and Orders of Railroad Commission Should not be Stayed or Suspended During Pendency of Writ of Review;

6. Notice of Application for Stay and Suspension of Decisions and Orders of Railroad Commission;

7. Affidavit of Service;

8. Order of Supreme Court of California Resetting Hearing on Order to Show Cause and Extending Order Granting Temporary Stay of Decisions and Orders of Railroad Commission;

(NOTE.—The above items Nos. 3 to 8, inclusive, may be omitted in printing by making suitable reference thereto.)

9. Answer of Railroad Commission to Petition for Writ of Review;

10. Reply of American Toll Bridge Company to Answer of Railroad Commission to Petition for Writ of Review;

11. Writ of Review;

12. Order Staying and Suspending Decisions and Orders of Railroad Commission Pending Writ of Review;

13. Suspending Bond During Pendency of Writ of Review;

(NOTE.—The above items Nos. 12 and 13 may be omitted in printing by making suitable reference thereto.)

14. Return of Railroad Commission of California to Writ of Review (omitting pleadings, transcripts of testimony, exhibits and record and attached Memorandum of Documents filed with the Supreme Court of California);

15. Order of Supreme Court of California submitting case for decision;

16. Decision of Supreme Court of California;



[fol. 5] 17. Petition of American Toll Bridge Company for Rehearing by Supreme Court of California;

18. Answer of Railroad Commission to Petition for Rehearing;

19. Order of Supreme Court of California Denying Petition for Rehearing;

20. Remittitur issued out of the Supreme Court of California;

21. Petition of American Toll Bridge Company for Appeal; Assignment of Errors and Prayer for Reversal;

22. Statement of Appellant Respecting Jurisdiction of Court to Review Judgment;

23. Order Allowing Appeal;

24. Bond of American Toll Bridge Company, approved by Chief Justice of Supreme Court of California and to operate as a supersedeas;

25. Citation;

(NOTE.—The above items Nos. 24 and 25 may be omitted in printing by making suitable reference thereto.)

26. Statement of Appellees Opposing Jurisdiction and Motion to Dismiss or Affirm;

27. Transcript of Proceedings, Testimony and Exhibits before the Railroad Commission of the State of California:

The following portions of the transcript of proceedings, testimony and exhibits before the Railroad Commission of California:

(1) Transcript:

Page 2, lines 3 to 22, inclusive.

Page 3, lines 16 to 26, inclusive.

[fol. 6] Page 4, lines 12 to 26, inclusive.

Pages 5, 6, 7, 8 and 9, inclusive.

Page 10, lines 1 to 10, inclusive.

Page 12, lines 3 to 17, inclusive.

Page 12, lines 24 to 26, inclusive.

Page 13, lines 1 to 17, inclusive.

(2) Exhibit No. 1:

Pages 1 to 22 (down to words "The income and . . ."), inclusive;

also page 25 and page 26, lines 1 and 2.

## (3) Transcript:

Page 13, lines 18 to 26, inclusive.

Page 14, lines 1 to 11, inclusive.

Page 30, lines 6 to 24, inclusive.

Page 32, lines 2 to 5, inclusive.

## (4) Exhibit No. 3:

Pages 1 to 4, inclusive, and 8 to 27, inclusive.

## (5) Transcript:

Page 32, lines 6 to 26, inclusive.

Page 33, lines 1 to 26, inclusive.

Page 34, lines 1 to 10, inclusive.

Page 35, lines 1 to 16, inclusive.

Page 46, lines 14 to 19, inclusive.

Page 62, lines 9 to 23, inclusive.

Page 63, lines 5 to 8, inclusive.

## (6) Exhibit No. 16:

Pages 1 to 13 (ending with "amounted to \$688,092.56")  
[fol. 7] and 15, 16, 17 and 19, inclusive.

## (7) Transcript:

Page 63, lines 9 to 15, inclusive.

Page 63, lines 22 (beginning with "As pointed out  
\* \* \*") to 26, inclusive.

Page 64, lines 1 to 21, inclusive.

Page 65, lines 25 and 26.

Page 66, lines 1 to 26, inclusive.

Page 67, lines 1 to 11, inclusive.

Page 67, line 23 (beginning with "A. Coming \* \* \*")  
to line 26, inclusive.

Pages 68, 69, 70—entire pages.

Page 71, line 1.

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## (8) Exhibit No. 17:

Page 7.

## (9) Transcript:

Page 75, lines 8 to 26, inclusive.  
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 Page 83, lines 9 to 24, inclusive.  
 Page 85, lines 8 to 15, inclusive.

## (10) Exhibit No. 19:

Map preceding page 1; pages 10, 11, 12, 13; and attached exhibit, being Ordinance No. 171 of Contra Costa County, pages 1 to 8, inclusive.

## [fol. 8] (11) Transcript:

Page 85, lines 18 to 25 (to word "Now"), inclusive.  
 Page 90, lines 17 to 26, inclusive.  
 Page 91, lines 1 to 12, inclusive.  
 Page 92, line 24 (beginning with "A") to line 26, inclusive.

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 Page 102, lines 16 to 26, inclusive.  
 Page 103, lines 1 to 26, inclusive.  
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 Page 114, lines 1 to 16, inclusive.  
 Page 115, lines 1 to 19, inclusive.  
 Page 117, lines 8 to 26, inclusive.  
 Page 118, lines 1 to 26, inclusive.  
 Page 119, lines 1 to 26, inclusive.  
 Page 120, lines 1 to 24, inclusive.

## (12) Exhibit No. 22:

Page 1.

## (13) Transcript:

Page 122, lines 3 to 26, inclusive.  
 Page 123, lines 1 to 26, inclusive.  
 Page 124, lines 1 to 5, inclusive.  
 Page 129, lines 2 to 15, inclusive.  
 Page 130, lines 3 to 17, inclusive, and line 26.  
 [fol. 9] Pages 131, 132, 133, 134, 135, 136—all.

- Page 137, lines 1 to 17, inclusive.  
 Page 139, line 21 (beginning with "Going back") to line 25, inclusive.  
 Page 140, line 1 (words "As I") to line 6, inclusive.  
 Page 141, lines 25 and 26.  
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 Page 143, lines 9 to 21, inclusive.  
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 Page 515, lines 1 to 26, inclusive.  
 Pages 516, 517 and 518—all.  
 Page 519, lines 1 to 8, inclusive.  
 Page 521, lines 5 to 26, inclusive.  
 Page 524, lines 5 to 26, inclusive.  
 Pages 525, 526, 527, 528, 529, 530—all.  
 Page 531, lines 1 to 24 (to "Now"), inclusive.  
 [fol. 21] Page 533, lines 11 ("The best") to line 22 (to "That"), inclusive.  
 Page 534, lines 19 to 26, inclusive.  
 Page 535, lines 1 to 10, inclusive, and lines 22 to 26, inclusive.  
 Page 536, lines 1 to 26, inclusive.  
 Page 537, lines 1 to 20, inclusive.  
 Page 540, lines 2 to 26, inclusive.  
 Page 541, lines 1 to 13, inclusive.  
 Page 545, lines 25 and 26.  
 Page 546, lines 12 to 26, inclusive.  
 Page 547, lines 1 to 26, inclusive.

Page 548, lines 1 to 21, inclusive.  
 Page 551, lines 10 to 26, inclusive.  
 Pages 552, 553, 554, 555, 556—all.  
 Page 557, lines 1 to 24, inclusive.  
 Page 559, lines 1 to 6, inclusive.  
 Page 559, lines 22 to 26, inclusive.  
 Page 560, lines 1 to 6, inclusive.

(14) Exhibit No. 117:

Pages 26, 27, 28, 29, 30.

(15) Transcript:

Page 560, lines 7 to 9 (to "A."), inclusive.  
 Page 560, lines 15 ("I have") to 26, inclusive.  
 Page 561, line 1.  
 Page 567, lines 24 to 26, inclusive.  
 [fol. 22] Page 568, lines 1 to 26, inclusive.  
 Page 569, lines 1 to 9, inclusive.  
 Page 569, lines 14 to 22, inclusive.  
 Page 573, lines 12 to 20, inclusive.

(16) Exhibit No. 118:

Page 25.

(17) Transcript:

Page 573, lines 21 to 25, inclusive.  
 Page 574, lines 7 to 26, inclusive.  
 Page 575, lines 1 to 7, inclusive.  
 Page 575, lines 17 to 26, inclusive.  
 Page 576, lines 1 to 9 (to "In"), inclusive.  
 Page 577, lines 2 to 10, inclusive.  
 Page 578, lines 5 to 26, inclusive.  
 Pages 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589,  
 590, 591—all.  
 Page 592, lines 1 to 9, inclusive.  
 Page 595, lines 4 to 26, inclusive.  
 Page 596, lines 1 to 6, inclusive.  
 Page 596, lines 12 to 25, inclusive.  
 Page 599, lines 4 to 7, inclusive.  
 Page 599, lines 20 to 26, inclusive.  
 Pages 600, 601, 602—all.  
 Page 603, lines 1 to 25, inclusive.

Page 605, lines 2 to 6, inclusive.

Page 605, lines 11 to 20, inclusive.

[fol. 23] (18) Exhibit No. 120:

Page 4.

(19) Transcript:

Page 605, lines 21 to 26, inclusive.

Pages 606 and 607—all.

Page 608, lines 1 to 16, inclusive.

(20) Exhibit No. 121:

Page 4.

(21) Transcript:

Page 608, lines 17 to 26, inclusive.

Pages 609, 610, 611—all.

Pages 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625—all.

Page 626, lines 1 to 23, inclusive.

Page 627, lines 7 to 26, inclusive.

Pages 628 and 629—all.

Page 630, lines 1 to 11, inclusive.

Page 634, lines 6 to 12, inclusive.

Page 637, lines 19 to 26, inclusive.

Page 638, lines 1 to 6 (word "deposited"), inclusive.

Page 639, lines 13 to 26, inclusive.

Page 640, line 1.

Page 641, lines 13 ("So that the") to 26, inclusive.

Page 642, lines 1 to 24, inclusive.

Page 643, lines 5 to 26, inclusive.

Page 644, lines 1 to 26, inclusive.

[fol. 24] Pages 645, 646, 647, 648—all.

Page 649, lines 1 to 17, inclusive.

Page 658, lines 11 to 26, inclusive.

Page 659, lines 1 to 13, inclusive.

Page 665, lines 7 to 26, inclusive.

Pages 666, 667, 668, 669, 670—all.

Page 671, lines 1 and 2.

(22) Exhibit No. 126:

Pages 1, 2, 3, 4.



## (23) Transcript:

Page 671, lines 3 to 26, inclusive.  
 Pages 672, 673, 674, 675, 676, 677, 678, 679, 680—all.  
 Page 681, lines 1 to 17, inclusive.  
 Page 686, lines 3 to 26, inclusive.  
 Page 687, lines 1 to 15, inclusive.  
 Page 687, lines 20 to 26, inclusive.  
 Page 688, lines 1 to 3, inclusive.

## (24) Exhibit No. 127:

Pages 1 and 2.

## (25) Transcript:

Page 688, lines 4 to 26, inclusive.  
 Page 689, lines 1 to 14, inclusive.  
 Page 690, lines 1 to 26, inclusive.  
 Page 691, lines 1 to 17, inclusive.  
 Page 692, lines 19 to 23, inclusive.

## (26) Exhibit No. 128:

Page 1.

## [fol. 25] (27) Transcript:

Page 692, lines 24 to 26, inclusive.  
 Page 693, lines 1 to 26, inclusive.  
 Page 694, lines 1 to 26, inclusive.  
 Page 695, lines 14 ("Now, Mr. Ready") to 19, inclusive.

## (28) Exhibit No. 129:

Pages 1 to 5, inclusive, and Tables No. 1, 2 and 3.

## (29) Transcript:

Page 695, lines 20 to 26, inclusive.  
 Pages 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706—all.  
 Page 707, lines 1 to 12, inclusive.  
 Page 714, lines 23 to 26, inclusive.  
 Page 715, lines 1 to 6, inclusive.  
 Page 725, lines 1 to 6, inclusive.

## (30) Exhibit No. 132:

Tables 4, 5, 6, 7.

## (31) Transcript:

Page 725, lines 7 to 26, inclusive.

Pages 726, 727, 728, 729, 730, 731, 732, 733—all.

Page 734, lines 1 to 23, inclusive.

Page 735, lines 6 to 26, inclusive.

Page 736, lines 1 to 18 (to "I"), inclusive.

Page 741, lines 2 to 25 (to "I"), inclusive.

[fol. 26] Page 760; lines 15 (beginning with "My") to 26, inclusive.

Page 761, lines 1 to 18 (to "There"), inclusive.

Page 762, line 3.

## (32) Exhibit No. 134:

Pages 1, 2, 3, 4.

## (33) Transcript:

Page 762, lines 15 to 23 (to "It"), inclusive.

Page 763, lines 3 (beginning with "On") to 26, inclusive.

Page 764, lines 1 to 15 (to "Now"), inclusive.

Page 771, lines 25 and 26.

Page 772, lines 1 to 26, inclusive.

Page 773, lines 1 to 4, inclusive.

## (34) Exhibit No. 135:

Pages 1, 2, 3.

## (35) Transcript:

Page 777, lines 13 to 18, inclusive.

Page 779, lines 4 and 5.

Page 783, lines 8 to 26, inclusive.

Page 784, lines 1 and 2.

Page 789, lines 23 to 26, inclusive.

Pages 790 and 791—all.

Page 792, lines 1 to 14, inclusive.

## (36) Exhibit No. 137:

Page 1.

## (37) Transcript:

Page 792, lines 15 to 26, inclusive.

[fol. 27] Page 793, lines 1 to 26, inclusive.

Page 794, lines 1 to 18, inclusive.  
 Page 806, lines 24 to 26, inclusive.  
 Pages 807, 808, 809, 810, 811—all.  
 Page 813, lines 3 to 26, inclusive.  
 Page 814, lines 1 to 26, inclusive.  
 Page 815, lines 1 to 4, inclusive.  
 Page 816, lines 9 to 26, inclusive.  
 Pages 817, 818, 819, 820—all.  
 Page 821, lines 1 to 6, inclusive.  
 Page 826, lines 10 to 22, inclusive.  
 Page 829, lines 11 to 13, inclusive.  
 Page 830, lines 6 to 15 (to period after "traffic"), inclusive.  
 Page 831, lines 21 (from "However") to 26, inclusive.  
 Page 832, lines 1 and 2 and 9 to 26, inclusive.  
 Page 833, lines 1 to 16, inclusive.  
 Page 834, lines 4 to 26, inclusive.  
 Page 835, lines 1 to 26, inclusive.  
 Page 836, lines 1 to 3, inclusive.

(38) Exhibit No. 142:

Pages 1, 2, 3.

(39) Transcript:

Page 839, lines 4 to 26, inclusive.  
 Page 840, lines 1 to 19, inclusive.  
 Page 841, lines 17 to 26, inclusive.  
 Page 842, lines 1 to 10, inclusive.

[fol. 28] 28. The Certificate of the Clerk of the Supreme Court of the State of California:

29. Certify separately and forward to the Clerk of the Supreme Court of the United States the following "Original Exhibits":

a. American Toll Bridge Company's Exhibits Nos. 24 and 25, being photographs respectively taken on May 10 and 15, 1923.

b. American Toll Bridge Company's Exhibit No. 26, being blueprint entitled "Proposed Highway Bridge across Carquinez Strait from Valona to Morrow Cove."

c. American Toll Bridge Company's Exhibits Nos. 27 to 103, inclusive, being photographs taken at various times between May 24, 1923 and January 6, 1925.

d. American Toll Bridge Company's Exhibits Nos. 104 and 105, being Sheets 1 and 2 of white-print entitled "Plans for Fender System at Carquinez Bridge".

e. American Toll Bridge Company's Exhibits Nos. 106 to 116, inclusive, being photographs taken at various times between May 13, 1927 and May 12, 1929, inclusive.

f. American Toll Bridge Company's Exhibit No. 117, entitled "Reasonable Historical Cost, Carquinez Bridge, American Toll Bridge Company".

g. American Toll Bridge Company's Exhibit No. 118, entitled "Reproduction of Carquinez Bridge (new), American Toll Bridge Company".

h. American Toll Bridge Company's Exhibit No. 119, entitled on the first page "Table 1, Summary Comparison of Interest During Construction, Carquinez Bridge".

i. American Toll Bridge Company's Exhibit No. 120, entitled "Reasonable Historical Cost, Antioch Bridge, American Toll Bridge Company".

j. American Toll Bridge Company's Exhibit No. 121, entitled "Reproduction of Antioch Bridge (new), American Toll Bridge Company".

[fol. 29] k. American Toll Bridge Company's Exhibit No. 122, being copy of letter of April 18, 1923, from the War Department to the Company enclosing first War Department Permit of April 17, 1923.

l. American Toll Bridge Company's Exhibit No. 123, being copies of 27 letters between War Department and Department of Commerce and the Company, relating to Temporary and Permanent Fender Systems.

m. American Toll Bridge Company's Exhibit No. 124, being copy of Agreement of January 24, 1925, between American Toll Bridge Company and Raymond Concrete Pile Company.

n. American Toll Bridge Company's Exhibit No. 125, being copy of letter dated January 29, 1925, from American Toll Bridge Company to Raymond Concrete Pile Co.

o. American Toll Bridge Company's Exhibit No. 126, entitled "Estimate of Cash Requirements, by Years, for the Period from January 1, 1938 to June 30, 1948".

p. American Toll Bridge Company's Exhibit No. 127, entitled "Estimated Value, Rodeo Vallejo Ferry Company Franchise".

q. American Toll Bridge Company's Exhibit No. 128, entitled "American Toll Bridge Company—Earning State-

ment, Martinez-Benicia Ferry and Transportation Company, 1935-1937".

r. American Toll Bridge Company's Exhibit No. 129, entitled "Cost of Money and Fair Rate of Return—American Toll Bridge Company".

s. American Toll Bridge Company's Exhibit No. 130, entitled "Distribution of Automobile Traffic—Carquinez and Antioch Bridges and Martinez-Benicia Ferry—American Toll Bridge Company".

t. American Toll Bridge Company's Exhibit No. 131, entitled "Reported and Estimated Traffic and Revenue under Present Rate—Carquinez and Antioch Bridges—1926 to 1948".

u. American Toll Bridge Company's Exhibit No. 132, [fol. 30] entitled "Estimated Earnings, American Toll Bridge Company, 1926 to 1948, Present Tolls".

v. American Toll Bridge Company's Exhibit No. 133, entitled "American Toll Bridge Company—Estimated Increase in Automobile Traffic Which Would Result from Reduction of Tolls Suggested by J. G. Hunter".

w. American Toll Bridge Company's Exhibit No. 134, the first page being entitled "Analysis on Traffic and Revenue 1936 and 1937, Carquinez Bridge, Present Rates and Rates Proposed by J. G. Hunter".

x. American Toll Bridge Company's Exhibit No. 135, entitled "Summary of Earnings—American Toll Bridge Company—Based on Continuation of Present Rates and also Based on Tolls Proposed by J. G. Hunter".

y. American Toll Bridge Company's Exhibit No. 136, entitled "Estimated Taxable Revenues, Deductions Therefrom, and Federal Taxes Thereon, by Years, for Period from January 1, 1938 to June 30, 1948".

z. American Toll Bridge Company's Exhibit No. 142, entitled "Items of Cost of American Toll Bridge Company not Chargeable to Tolls under San Francisco-Oakland Bay Bridge Operation".

Dated at San Francisco, California, this 30th day of January, 1939.

Max Thelen, Attorney for Appellant. Ira H. Rowell,  
Roderick B. Cassidy, George E. Howard, Attorneys  
for Appellees.

[fol. 31]

## ORDER

It being the opinion of the Chief Justice of the Supreme Court of the State of California that it is necessary and proper that those certain original exhibits specified in the foregoing Joint Praecipe and Stipulation for transcript of record be inspected in the Supreme Court of the United States on appeal, it is, therefore, hereby ordered that the clerk deliver such original exhibits to the Supreme Court of the United States for filing with the record in this case in connection with the transcript of proceedings therein and that after such inspection by the Supreme Court of the United States said original exhibits be returned to the clerk of the Supreme Court of the State of California.

Dated at San Francisco, California, this 1st day of February, 1939.

Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 32] [File endorsement omitted]

[fol. 33] IN SUPREME COURT OF CALIFORNIA

S. F. No. 16,006

AMERICAN TOLL BRIDGE COMPANY, a Corporation, Petitioner,  
vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, WALLACE L. WARE, Frank R. Devlin, Ray L. Riley, Ray C. Wakefield and Leon O. Whitsell, as Members of and Constituting the Railroad Commission of the State of California, Respondents

PETITION FOR WRIT OF REVIEW—Filed February 25, 1938

To the Honorable, the Supreme Court of the State of California:

Comes Now the petitioner above named and files this its petition for a writ of review and respectfully shows:

## I

That American Toll Bridge Company, petitioner herein, at all times herein mentioned has been and now is a corpora-



tion duly organized and existing under and by virtue of the laws of the State of Delaware and engaged in the business of owning and operating two toll bridges across the Carquinez Straits and a tributary of the San Joaquin River, as follows:

1. The Carquinez Bridge, between Crockett in Contra Costa County and Valona in Solano County; and

2. The Antioch Bridge across the San Joaquin River near Antioch, between the Counties of Contra Costa and Sacramento.

That the Carquinez Bridge was constructed and is being operated under franchise granted by the board of supervisors of Contra Costa County on February 5, 1923, which franchise will expire on or about March 5, 1948.

That the Antioch Bridge was constructed and is being operated under franchise granted by the board of supervisors of Contra Costa County on June 4, 1923, which franchise will expire on or about July 4, 1948.

That both franchises provide that upon their expiration the title to the respective toll bridges shall revert to the adjacent counties without the payment of any compensation to the Company.

That both bridges were constructed and have been and are being owned and operated as two parts of the single transportation system of the American Toll Bridge Company, and that said bridges are located only 25 miles apart and serve in major part the same territories and the same traffic.

## II

That respondent Railroad Commission of the State of [fol. 35] California is and at all times herein mentioned was a Commission organized and existing under and by virtue of the laws of the State of California and that respondents, Wallace L. Ware, Frank R. Devlin, Ray L. Riley, Ray C. Wakefield and Leon O. Whitsell are the members of and constitute said Railroad Commission of the State of California.

## III

That on or about August 27, 1937, said Railroad Commission made and filed its order instituting an investigation on its own motion into the operations, rates, charges, classifi-

cations, rules, regulations, contracts and practices, or any thereof, of the privately owned toll bridges across San Francisco Bay, specifically including both the Carquinez and the Antioch Bridges of said American Toll Bridge Company, and set a hearing in said matter for October 26, 1937, a copy of which order is annexed hereto, marked Exhibit "A" and made a part hereof.

That on or about October 4, 1937, said Railroad Commission made and filed an order instituting an investigation on its own motion into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company, confined to said Company's operations over said Carquinez Bridge, and set a hearing in said matter for said October 26, 1937, a copy of which order is annexed hereto, marked Exhibit "B" and made a part hereof.

[fol. 36]

#### IV

That thereafter, on October 26, December 2, 3, 21, 22 and 23, 1937 and January 18, 19 and 28, 1938, hearings were had before said Railroad Commission in said matters, at which hearings testimony was presented by said Railroad Commission and your petitioner.

#### V

That thereafter, and on February 8, 1938, said Railroad Commission made and filed its opinion and order in said matter, copy of which is attached hereto, marked Exhibit "C" and made a part hereof.

#### VI

That thereafter, on the 17th day of February, 1938, being more than 10 days before the effective date of said decision and order, this petitioner filed with said Railroad Commission a petition for a rehearing in said matter, a copy of which said petition is attached hereto, marked Exhibit "D" and made a part hereof.

#### VII

That thereafter, and on February 21, 1938, said Railroad Commission made its order denying said petition for rehearing, a copy of which said order is attached hereto, marked Exhibit "E" and made a part hereof.

## VIII

That said decisions and orders of said Railroad Commission made on February 8, 1938 and February 21, 1938 [fol. 37] were and are and each thereof was and is unlawful for each of the reasons set forth in said petition for rehearing (Exh. "D" hereto), to which petition reference is hereby made for a more particular statement of the same.

## IX

That said order and decision of said Railroad Commission made on February 8, 1938, and also said order and decision of said Railroad Commission made on February 21, 1938, are, and each of them is, erroneous and contrary to law for each of the following reasons, among others:

1. Said decisions and orders and each of them violate the rights of petitioner under Section 1 of Article XIV of the Amendments to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of the State of California because in fixing the tolls to be charged by petitioner for automobiles and passengers on foot or in vehicles moving over said Carquinez Bridge, said Railroad Commission omitted substantial items of property of petitioner used and useful in its business of owning and operating said Carquinez Bridge, also made erroneously low allowances for other items of property so used, also failed to make any allowance for the cost of developing the business or going concern value, also fixed an erroneously low figure as representing the fair value of petitioner's property so used, also fixed a rate of return far below the actual cost of money used by petitioner in the [fol. 38] construction of said Carquinez Bridge, also fixed tolls which will not yield to petitioner a fair return on the fair value of its properties used and useful in the public service of owning and operating said Carquinez Bridge.

2. Said decisions and orders, and each of them, violate the rights of petitioner under Section 1 of Article XIV of the Amendments to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of the State of California because said Railroad Commission picked said Carquinez Bridge out from petitioner's single and unified transportation system, consisting of both the Carquinez and the Antioch Bridges, and fixed tolls for

the Carquinez Bridge alone, which is the more profitable portion of petitioner's said single and unified transportation system, and by thus excluding from said decision and order said Antioch Bridge, arbitrarily, unfairly and unjustly fixed tolls which, when applied to both bridges as they necessarily and inevitably must be, will deprive petitioner of a fair return upon the fair value of the property devoted by it to its single, unified transportation system consisting of the Carquinez and the Antioch Bridges.

3. Said decisions and orders, and each of them, violate the rights of petitioner under Section 1 of Article XIV of the Amendments to the Constitution of the United States [fol. 39] and Sections 13 and 14 of Article I of the Constitution of the State of California for the reasons that in this case of "wasting assets" the property in which will be necessarily and irretrievably lost to petitioner at the expiration of its franchise in 1948, the Railroad Commission fixed said tolls so low that they will necessarily and inevitably fail in the sum of at least \$2,841,767.00 to yield to petitioner sufficient revenues to enable petitioner to meet the principal and interest of its bonds and to retire its capital stock at par with reasonable dividends.

4. Said decisions and orders, and each of them, violate Paragraph 1 of Section 10 of Article I of the Constitution of the United States, Section 16 of Article I of the Constitution of California, the Act of March 14, 1881 of the Laws of California and Sections 2845 to 2848, inclusive, and Section 2872 of the Political Code of the State of California because said decisions and orders impair the obligation of petitioner's contract with the State of California, under which contract the State, acting through the Board of Supervisors of Contra Costa County, contracted with the grantees of the franchises for the construction and operation of the Carquinez and the Antioch Bridges that during the term of 20 years after the granting of said franchises the public authorities would not reduce the tolls set forth in the ordinance granting said franchises unless the Board of Supervisors should first have found that said tolls were yielding to the Toll Bridge Company a rate of return in [fol. 40] excess of 15% on the actual cost of the construction or erection of said bridges and such additional income as will provide for the annual cost of operation, maintenance, amortization and taxes of said bridges.

5. Said decisions and orders, and each of them, were made on the assumption by the Railroad Commission that the Carquinez Bridge is fairly comparable with the two publicly owned and operated San Francisco Bay bridges and that the tolls charged over the Carquinez Bridge could be fixed as low as those charged by the two San Francisco Bay bridges, which assumed analogy is false and grossly unfair to petitioner.

6. Said decisions and orders, and each of them, are arbitrary, unjust and unreasonable and violate the rights of petitioner under the Constitutions of the United States and of California and the statutes of California for each other reason which is specified in petitioner's said petition for rehearing before said Railroad Commission (Exh. "D" hereto).

## X

That this is a proceeding in which petitioner has challenged and does challenge the validity of said orders and decisions of the Railroad Commission on the specific ground, among others, that said decisions and orders, and each of them, violate the rights of petitioner under the Constitution of the United States, namely, under Section 1, Article [fol. 41] XIV, of the Amendments to said Constitution and under Paragraph 1, Section 10 of Article I of said Constitution, and in which proceeding it is, of course, the duty of this Court to exercise an independent judgment on the law and the facts and in which the findings or conclusions of the Railroad Commission material to the determination of the said constitutional questions shall not be final, all as provided in the Laws of California, St. 1933, ch. 442, pp. 1157-8.

## XI

That unless the operation and enforcement of said decisions and orders of the Railroad Commission be stayed and suspended before, during and after the hearing upon petitioner's application upon notice for an order suspending the operation of the Commission's said decisions and orders throughout the pendency before this Court of the writ of review herein prayed for, great, irreparable and immediate damage will result to your petitioner in that if petitioner is required to collect the lower tolls fixed by the Railroad Commission, as aforesaid, for the transportation of auto-



mobiles and passengers on foot or in vehicles over the Carquinez Bridge, as aforesaid, during the pendency of said writ of review, or during any of said time, and if said Court should thereafter decide that the Railroad Commission's said decisions and orders were and are unlawful and should set the same aside, then petitioner would be [fol. 42] unable to collect from any of the parties who paid said reduced tolls the difference between petitioner's tolls for said services heretofore and now in effect and said reduced tolls fixed by the Railroad Commission, all of which money would be irretrievably lost to petitioner, and that said injury, loss and damage would be immediate and irreparable before notice can be served and hearing had upon petitioner's motion for a stay of said orders and decisions upon 5 days' notice as provided in Section 68(b) of the Public Utilities Act of the State of California, as amended (St. 1933, ch. 442, pp. 1157, 1158).

That said matters are set forth in greater detail in the affidavit of Will F. Morrish, president of American Toll Bridge Company, filed herewith, to which affidavit reference is hereby made for further particulars.

## XII

That petitioner offers to file in connection both with a temporary stay and with a stay or suspension after notice during the pendency of said writ of review before this Court, a suspension bond or bonds in such form and amount or amounts as this Court may approve.

That petitioner offers to keep, in connection both with said temporary stay and said stay and suspension after notice and hearing, such records and accounts, verified by oath, as may, in the judgment of this Court, show the amount to be charged or received by petitioner in excess of [fol. 43] the charges allowed by said decisions and orders of the Railroad Commission, together with the names and addresses of the corporations and persons to whom overcharges will be refundable in the event that said orders and decisions of the Railroad Commission are upheld.

Wherefore, petitioner prays that a writ of review be granted by this Court requiring the Railroad Commission of the State of California to certify fully to this Court, at a specified time and place to be designated by this Court, the transcript of the records and proceedings of said Rail-



road Commission taken and had in said proceedings hereinbefore described in order that said decisions and orders of said Railroad Commission, and each of them, may be reviewed by this Court and that upon a review thereof such orders and decisions, and each of them, may be annulled, set aside and adjudged void and of no effect for the reasons herein mentioned; that this Court grant an immediate temporary stay restraining the operation of the Railroad Commission's said decisions and orders, such temporary stay to remain in effect until the hearing and determination by this Court of petitioner's application upon notice for a stay and suspension during the pendency of the writ of review before this Court; that thereafter, on said hearing, this Court make its order staying and suspending the operation of the Railroad Commission's said decisions and orders [fols. 44-45] during the pendency of said writ of review; and for such other and further relief as may be meet and proper in the premises.

Dated February 25, 1938.

Thelen & Marrin, by Max Thelen, Balfour Building, San Francisco, California. Dunn, White & Aiken, by B. R. Aiken, and Bauer E. Kramer, Syndicate Building, Oakland, California. Breed, Burpee & Robinson, by Harold C. Holmes, Jr., Financial Center Building, Oakland, California, Attorneys for Petitioner.

[fol. 46] EXHIBIT "A" TO PETITION

BEFORE THE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4244

In the Matter of the Investigation, on the Commission's Own Motion, into the Operations, Rates, Charges, Classifications, Rules, Regulations, Contracts and Practices, or any Thereof, of AMERICAN TOLL BRIDGE COMPANY, SAN FRANCISCO BAY TOLL BRIDGE COMPANY and DUMBARTON BRIDGE Co., Toll Bridge Corporations, as Defined by Statutes 1937, Chapter 896

By the COMMISSION:

#### ORDER INSTITUTING INVESTIGATION

It appearing that American Toll Bridge Company, a corporation, San Francisco Bay Toll Bridge Company, a corpo-

ration, and Dumbarton Bridge Co., a corporation, are engaged respectively, as toll bridge corporations, as defined by Section 2(ee), Public Utilities Act, (added by Statutes 1937, Chapter 896), in owning, controlling, operating and managing certain bridges and appurtenances thereto used for the transportation of persons and property, for compensation, as follows:

	Office Address	Bridge
American Toll Bridge Company	Vallejo, Calif.	Carquinez
American Toll Bridge Company	Vallejo, Calif.	Antioch
San Francisco Bay Toll Bridge Company	San Mateo, Calif.	San Mateo
Dumbarton Bridge Co.	505 Crocker Bldg., San Francisco, California.	Dumbarton

[fol. 47] And it further appearing that an investigation should be instituted by the Commission, on its own motion, concerning said toll bridge corporations and each of them, as hereinafter provided:

Now, therefore, good cause appearing,

It Is Hereby Ordered that an investigation be and it is hereby instituted by the Commission, on its own motion, into the operations, service, rates, tolls, rentals, charges, classifications, rules, regulations, contracts, practices, privileges and facilities, or any thereof, established, charged, assessed, collected and enforced, or to be established, charged, assessed, collected and enforced, by American Toll Bridge Company, a corporation, San Francisco Bay Toll Bridge Company, a corporation, and Dumbarton Bridge Co., a corporation, toll bridge corporations respectively, as defined by Section 2(ee), Public Utilities Act, (added by Statutes 1937, Chapter 896), respondents herein, in connection with and relating to the operation and maintenance by said respondents, respectively, of the said bridges and the appurtenances thereto, for the purpose of:

(a) determining whether or not the rates, tolls, rentals, charges and classifications established, charged, assessed, collected and enforced, or to be established, charged, assessed, collected and enforced, by said respondents, and each

of them, for the transportation of persons and property for [fol. 48] compensation over the said bridges operated by said respondents respectively, together with all rules, regulations, contracts, practices, privileges and facilities which may in any manner affect or relate to said rates, tolls, rentals, charges and classifications, were, are, or for the future will be unjust, unreasonable, unduly discriminatory, preferential or prejudicial; and

(b) establishing such rates, tolls, rentals, charges and classifications, together with all rules, regulations, contracts, practices, privileges and facilities affecting or relating to the same, or any thereof, for the transportation by said respondents, and each of them, of persons and property for compensation over the said bridges operated by said respondents respectively, as may be found to be just, reasonable, non-discriminatory, non-preferential, and non-prejudicial.

It is Hereby Further Ordered that a public hearing be had in the above entitled matter before Commissioner Riley in the Court Room of the Railroad Commission, State Building, San Francisco, California, at 10:00 o'clock, A. M., on Tuesday, the 26th day of October, 1937.

It is Hereby Further Ordered that said American Toll Bridge Company, San Francisco Bay Toll Bridge Company [fol. 49] and Dumbarton Bridge Co., be and they are hereby made respondents, and each of them is hereby made a respondent, to this proceeding; and the Secretary of the Railroad Commission is hereby authorized and directed to cause service of this order to be made upon said respondents, and each of them, not later than ten (10) days before the date of said hearing.

Dated at San Francisco, California, this 27th day of August, 1937.

Wallace L. Ware, Leon O. Whitsell, Frank R. Devlin,  
Ray C. Wakefield, Ray L. Riley, Commissioners.

Certified as a True Copy.

H. G. Mathewson, Secretary, Railroad Commission,  
State of California.

[fol. 50]

## EXHIBIT "B" TO PETITION

BEFORE THE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4259

In the Matter of the Investigation upon the Commission's Own Motion, into the Rates, Charges, Contracts, Classifications, Rules and Regulations of AMERICAN TOLL BRIDGE COMPANY Covering Its Operation of the Toll Bridge Over the Carquinez Straits Between the Counties of Contra Costa and Solano

By the COMMISSION :

## ORDER INSTITUTING INVESTIGATION

The Commission heretofore having instituted an investigation into the rates and practices of the American Toll Bridge Company and of other corporations operating toll bridges, and it appearing proper that a separate proceeding be instituted to inquire into the reasonableness of the tolls charged upon the Carquinez bridge, therefore, good cause appearing,

It Is Ordered that an investigation be instituted upon the Commission's own motion into the reasonableness of the rates, charges, contracts, classifications, rules and regulations, or any thereof, now charged or enforced by American Toll Bridge Company in the operation of that toll bridge over the Carquinez Straits between the Counties of Contra Costa and Solano, or which reasonably may be charged or enforced by said corporation in the operation of said toll bridge.

[fol. 51] It Is Hereby Further Ordered that a public hearing be had upon said investigation before Commissioner Riley in the Courtroom of the Commission, State Building, San Francisco, California, at 10 o'clock A. M. on Tuesday, October 26, 1937, and that the Secretary be directed to cause a copy of this order to be served upon American Toll Bridge Company at least ten (10) days prior to the date of said hearing.

Dated, San Francisco, California, October 4th, 1937.

Wallace L. Ware, Leon O. Whitsell, Frank R. Devlin,  
Ray C. Wakefield, Ray L. Riley, Commissioners.

Certified as a True Copy.

H. G. Mathewson, Secretary, Railroad Commission,  
State of California.

[fol. 52]      EXHIBIT "C" TO PETITION

Decision No. 30612

BEFORE THE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4259

In the Matter of the Investigation upon the Commission's Own Motion, into the Rates, Charges, Contracts, Classifications, Rules and Regulations of AMERICAN TOLL BRIDGE COMPANY Covering Its Operation of the Toll Bridge Over the Carquinez Straits Between the Counties of Contra Costa and Solano.

Dunn, White & Aiken, by Ben R. Aiken; Breed, Burpee & Robinson, by Harold C. Holmes, Jr.; and Thelen & Marlin, by Max Thelen, for the American Toll Bridge Company.

Brobeck, Phleger & Harrison, by James S. Moore, for the Dumbarton Bridge Company.

Orrick, Palmer & Dahlquist, by George Herrington, and Garret McEnerney, for the San Francisco Bay Toll Bridge Company.

John J. O'Toole, City Attorney, and Dion R. Holm, Assistant City Attorney, for the City and County of San Francisco.

R. L. Chamberlain, for the Attorney General of the State of California.

W. Johnson, for T. M. Carlson, City Attorney of the City of Richmond, for the City of Richmond.

Louis Purcell, for the Crockett Signal.

Nathan E. Coombs and Charles Gray, for the Napa Chamber of Commerce.

Edwin G. Wilcox and Walter A. Rohde, for the San Francisco Chamber of Commerce.

Harry A. Barnes, for the Martinez Chamber of Commerce.

Irvin B. Wright, for the California State Chamber of Commerce.

N. E. Keller, for the Pacific Portland Cement Company.

J. B. Costello, for the Sperry Flour Company.

[fol. 53] C. C. Carleton, for the California Toll Bridge Authority.



C. C. Carleton, by Robert E. Reed and Frank B. Durkee, for the Department of Public Works of the State of California.

Henry Sweet, for the San Leandro Chamber of Commerce.

Frank O. Bell, for the Vallejo Chamber of Commerce.

P. M. Sanford, for the Richmond Chamber of Commerce.

J. Jorgensen, for the Pittsburg Chamber of Commerce.

T. H. Wilson, for the Sonoma Valley Chamber of Commerce.

William L. Bush, for the Contra Costa County Development Association.

W. B. Stafford, for the Antioch Chamber of Commerce.

T. G. Differding, for the Oakland Chamber of Commerce.

**RILEY, Commissioner:**

#### OPINION

In this proceeding, instituted by the Commission on its own motion, the Commission is called upon for the first time to determine the reasonableness of rates charged by this toll-bridge corporation.

By Chapter 896, Statutes of 1937, effective August 27, 1937, the Public Utilities Act of the State of California was amended so as to include toll-bridge corporations as public utilities subject to regulation by the Railroad Commission. Sections 2(dd) and 2(ee), as amended by Chapter 896, [fol. 54] Statutes of 1937, read—

(dd) The term "public utility", when used in this act, includes every common carrier, toll-bridge corporation, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof. (Amended 1937, ch. 896.)

(ee) The term "toll-bridge corporation", when used in this act, includes every private corporation or private person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any bridge or appurtenance thereto, used for the transportation of persons or property for compensation in this State. (Added 1937, ch. 896.)



### The Proceeding:

This case involves the rates charged by the American Toll Bridge Company for traffic over its so-called Carquinez Bridge.

The proceeding is unique in the history of regulation by this Commission of the affairs of public utilities under its jurisdiction. It differs from other rate proceedings heretofore conducted by the Commission in that there is involved in this case a public utility whose operating life as such will terminate on or about March 5, 1948, the date of the expiration of the franchise under which it conducts its operations. On that date the possession of the properties will pass from the company to the Counties of Contra Costa and Solano, without compensation to the company. Fur-[fol. 55] ther, here is involved a utility which was organized and for more than half its franchise life, has conducted its operations outside the jurisdiction of this Commission. For these reasons it would seem that a departure from the usual methods and procedure is warranted.

When Chapter 896 became effective the Commission on its own motion instituted a general investigation, Case No. 4244, into the affairs of all toll-bridge companies thus placed under its jurisdiction. An initial hearing was held in both cases on October 26, 1937, at which time Case No. 4244 was dropped temporarily from the calendar, thus leaving for consideration and determination the issues presented in Case No. 4259.

At the outset, counsel for American Toll Bridge Company, which, in addition, owns and operates a toll bridge, hereinafter referred to as the Antioch Bridge, across the San Joaquin River between a point near Antioch, Contra Costa County, and Sacramento County, entered a motion for both proceedings, so far as American Toll Bridge Company is concerned, to be consolidated for hearing and decision, so that the rates of both Antioch and Carquinez Bridge might be considered at this time. While it is true that in the development of the record in Case No. 4259 considerable evidence and testimony was introduced relating to the so-called Antioch Bridge, it has been decided to limit this decision and the order herein to Case No. 4259, namely, to [fol. 56] the operation of the Carquinez Bridge of the

American Toll Bridge Company, hereinafter sometimes referred to as the respondent.

Accordingly, the motion of counsel for respondent will be denied. However, in fixing rates in this decision for certain traffic over the Carquinez Bridge, consideration will be given to the effect of such rates on the company as a whole.

#### Historical Review:

In order that a complete picture might be presented of the bridge operations under review, a brief historical reference should be made.

It appears that on February 5, 1923 a 25-year franchise (Ordinance No. 171) was granted by the Board of Supervisors of Contra Costa County to Rodeo-Vallejo Ferry Company<sup>1</sup> providing for the construction and operation of the Carquinez Bridge. Thereafter, those in control of the affairs of Rodeo-Vallejo Ferry Company, on or about May 28, 1923, caused the organization of American Toll Bridge Company, respondent herein, and on July 2, 1923 caused the transfer to it of the rights to construct and operate the bridge. Said ordinance contains the following provision:

"It Is Hereby Ordered that at the expiration of term hereby granted the title to said toll bridge shall revert to the counties of Contra Costa and Solano".

Also on July 2, 1923 were transferred to respondent the [fol. 57] rights to construct and operate the Antioch Bridge which previously had been acquired by Delta Bridge Corporation<sup>2</sup> by a 25-year franchise granted by the Board of Supervisors of Contra Costa County on June 4, 1923.

Construction work was started on the Carquinez Bridge during April 1923 and on the Antioch Bridge during March, 1924. The Antioch Bridge was opened to traffic on January

<sup>1</sup> Rodeo-Vallejo Ferry Company at that time was engaged in operating ferries as a public utility between Shortway, Contra Costa County, and Morrow Cove, Solano County.

<sup>2</sup> Delta Bridge Corporation was organized under the laws of the State of California on or about December 21, 1922. Its outstanding stock (\$500 par value) was acquired by respondent on July 2, 1923.

1, 1926 with temporary approach roads which were not completed until July 1927. The Carquinez Bridge was opened to traffic on May 21, 1927 with a temporary fender system at the base of the center pier. The permanent fender was completed during December 1930.

The respondent company in addition to the two bridges now holds all the outstanding stock of the Rodeo-Vallejo Ferry Company, which at present owns certain water front lands and other real estate and improvements, and all the outstanding stock of Martinez-Benicia Ferry and Transportation Company, a corporation owning and operating ferries as a public utility between Martinez and Benicia. It also owns approximately \$68,000 shares of stock of American Toll Bridge Company of California.

[fol. 58] Financing of Properties:

Respondent was organized under the laws of the State of Delaware on or about May 28, 1923 with an authorized capital stock of \$5,000,000 divided into 5,000,000 shares of the par value of \$1.00 each, all of one class. At the same time there was organized, also under the laws of the State of Delaware, a separate corporation named American Toll Bridge Company of California, hereinafter referred to as the holding company.

An examination of respondent's records shows that on July 2, 1923 it issued all of its authorized capital stock, except \$1,000 previously issued to its incorporators, to the holding company, in exchange for stock of Rodeo-Vallejo Ferry Company and Delta Bridge Corporation, and for certain real estate, contracts and franchise. The record shows that the holding company in receiving the stock of respondent agreed to donate \$1,000,000 of such stock back to respondent and to sell \$1,500,000 thereof and to donate the receipts to respondent. It appears the plans of those in control of the two corporations called for the public sale of these two blocks of stock at a price of \$2 a share, although the par value was \$1.00 a share, and the use of forty cents for each share sold to pay commissions, as permitted by the Commissioner of Corporations, leaving a net [fol. 59] price to the company of \$1.60 a share.

Although some stock was sold at \$2.00 a share, the company did not sell all of the \$2,500,000 to the public, as orig-

inally planned. In December of 1925 it issued and sold, at 90, \$4,500,000 of first mortgage 7% bonds and \$2,000,000 of second mortgage 8% bonds to complete the cost of its construction. Both issues were dated as of April 1, 1925, maturing on April 1, 1945. Up to the middle of 1935 the company had reduced its capital stock to \$3,719,593<sup>3</sup> and its bonded debt to \$4,180,000. During 1935 it refunded its then outstanding seven and eight percent bonds through the issue of \$4,300,000 of first mortgage 5.5% bonds. The increase in the bonded debt was made in order to provide in part the cost of calling the then outstanding bonds and to pay expenses incident to the issue of the new bonds. The latter issue has been reduced to \$3,491,500 as of October 31, 1937.

The record shows the company's reported investment in its Carquinez Bridge structure, exclusive of lands, at [fol. 60] \$7,863,451.17. It appears that the company's earnings, over the period of its existence, have been sufficient to enable it to set up a reserve for depreciation of the Carquinez Bridge of \$2,748,443.34<sup>4</sup> and other reserves of \$1,055,313.48, and to accumulate a surplus of \$419,123.92, as of October 31, 1937.

#### Revenues:

A complete record has been developed of the revenues and expenses of the company since the inception of its operations up to October 31, 1937.

Exhibits filed in the proceeding show the operating revenues and the net operating revenues after deducting operating expenses, local taxes and an allowance for depreciation, for the Carquinez Bridge, as reflected in the company's books as follows:

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<sup>3</sup> In addition to the outstanding stock there is stock in the amount of \$57,280, represented by the reserve for contingencies, which is subject to re-issue. If and when such stock is re-issued the total amount outstanding will be increased to \$3,776,873.

<sup>4</sup> The reserve has been accumulated on the 6% sinking fund method based on the operating life of the bridge under the franchise which is designed to return the cost of the bridge upon the expiration of the franchise.

<i>Period</i>	<i>Corporate Revenue</i>	<i>Net Operating Revenue</i>
1927 (from May 21)	\$637,658.97	\$272,777.07
1928	986,570.91	339,601.72
1929	1,081,306.90	599,857.05
1930	1,193,727.47	714,558.05
1931	1,152,297.04	632,972.74
1932	975,911.13	460,730.17
1933	917,117.25	395,716.84
1934	959,228.97	448,091.77
1935	1,061,172.77	484,420.61
1936	1,306,191.01	739,908.00
1937 (to October 31)	1,311,553.21	759,156.15

[fol. 61] Cost of Properties:

A considerable amount of evidence and testimony was received of the cost or value of the bridge properties. The various figures and conclusions may be summarized as follows:

Book cost of bridge structure (Exhibit 1)	\$7,863,451
Estimated reasonable cost of construction (Exhibit 16)	6,877,318
Cost to reproduce new (Exhibit 16)	6,340,844
Original cost (Exhibit 117):	
Bridge structures	\$7,863,451
Land	66,835
Furniture and fixtures	19,668
	<hr/> 7,949,954
Adjusted original cost (Exhibit 117)	8,332,622
Reasonable historical cost (Exhibit 117)	8,139,307
Reproduction cost new (Exhibit 118)	8,743,231

However, there are included in the book costs certain items which appear to be more properly chargeable to other than capital accounts and certain items concerning which no information was available, approximating \$375,000. Further, the book figure includes certain expenditures for organization purposes whose reasonableness might well be questioned.

Estimated Revenue:

The company's schedule of rates at present provides for a toll of 60¢ per car and 10¢ per passenger.



Estimates of future revenue and traffic, based on an assumed toll of 50¢ per car and five passengers and 5¢ for other passengers were placed into the record by witnesses for the Commission and the respondent.

In Exhibit 23 the Commission's witness estimated that with such a revision in the rates the volume of traffic during 1937 would have been increased 13.5% and that such an increase, based on the 1937 traffic, would have produced for 1937 an amount available for return on investment of \$551,946.

In Exhibit 134 the respondent's witness estimated that with the same revision in rates an induced traffic of 11% might be expected which should produce for the year 1938 from the operation of the Carquinez Bridge a net income, before allowances for federal income and state franchise taxes, of \$629,799. An allowance for these items, based on the estimated revenue for 1938, would produce a net amount during 1938 available for return of approximately \$575,000. At the closing hearing in this matter, however, this witness modified his estimates and concluded that an increase of 13.5% might be expected which would produce an average annual income of approximately \$14,550 in excess of that appearing in his exhibit, bringing the total estimated net return up to approximately \$590,000.

A reduction in rates will stimulate the traffic over the bridge, although the extent, of course, cannot be estimated with exactitude. The results estimated for the 1938 revenue should produce a return of approximately 7.5% on the investment in the bridge structure. When tested upon the bases usually followed by the Commission such a rate of return is reasonable for this particular company; considering the unusual circumstances under which its properties were constructed and have been and are operated. However, for the time being, in order that the company may be assured of financial stability and to guard against possible inaccuracies in the estimate of induced traffic, by reason of rate reductions, a rate slightly higher than that proposed should be authorized.

Accordingly, I am of the opinion that a toll of 45¢ per car and of 5¢ for each passenger should be authorized for operations over the Carquinez Bridge. Such a rate should enable the company to meet its requirements under its trust indenture and amortization and dividend requirements.



In making this order, I wish to place respondent upon notice that the Commission may in the future reopen this proceeding when experience has developed further data of traffic moving over the bridge under the proposed rates. The truck, freight and other rates now appearing in the company's schedule of charges will have consideration in Case No. 4244. This order is not intended to change, or to be construed as approving, such other rates.

I herewith submit the following form of order:

### Order

Public hearings having been held in the above entitled matter and the Railroad Commission having given full and [fol. 64] careful consideration to the record before it and being of the opinion that the present rates of American Toll Bridge Company, referred to in this order, are unjust and unreasonable insofar as they differ from the rates herein prescribed which are hereby found to be just and reasonable rates, therefore,

It Is Hereby Ordered that American Toll Bridge Company shall file with the Commission, effective on and after March 1, 1938, a supplement to its tariff heretofore filed with the Commission on September 1, 1937 so as to change the items in its schedule of charges reading as follows:

Passengers (7 years of age and older) on foot or in vehicles	\$ .10
Auto only	.60

so as to read—

Passengers (7 years of age and older) on foot or in vehicles	.05
Auto only	.45

It Is Hereby Further Ordered that American Toll Bridge Company shall, on or before the 25th day of each month, file with the Commission a report showing its balance sheet as of the close of the preceding month, an income and profit and loss statement for the preceding month, together with a detailed statement of revenues and expenses, and a statement of the traffic moving over each bridge, segregated so as to show the number of automobiles, the number of passengers, the number and classification of trucks, the tonnage of [fol. 65] freight and the number and kinds of other vehicles, together with the gross revenue from each class of traffic.

It Is Hereby Further Ordered that unless otherwise directed, the order herein shall become effective twenty (20) days from the date hereof.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of February, 1938.

Wallace L. Ware, Frank R. Devlin, Ray L. Riley,  
Commissioners.

Certified as a True Copy.

H. G. Mathewson, Secretary, Railroad Commission,  
State of California.

[fol. 66] EXHIBIT "D" TO PETITION

BEFORE THE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4259

In the Matter of the Investigation upon the Commission's Own Motion, into the Rates, Charges, Contracts, Classifications, Rules and Regulations of AMERICAN TOLL BRIDGE COMPANY Covering Its Operation of the Toll Bridge Over the Carquinez Straits Between the Counties of Contra Costa and Solano

PETITION OF AMERICAN TOLL BRIDGE COMPANY FOR REHEARING

[fol. 66a]

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[fol. 66-1] BEFORE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4259

PETITION OF AMERICAN TOLL BRIDGE COMPANY FOR REHEARING

American Toll Bridge Company herewith respectfully applies to the Railroad Commission of the State of California for a rehearing on said Commission's Decision and Order of February 8, 1938 in the above-entitled matter.

I

Introduction

American Toll Bridge Company owns and operates two toll bridges across the same water barrier, namely, the [fol. 66-2] Carquinez Straits and the San Joaquin River, as follows:

1. The Carquinez Bridge, between Crockett in Contra Costa County and Valona in Solano County;

2. The Antioch Bridge, across the San Joaquin River near Antioch between the counties of Contra Costa and Sacramento.

The franchise for the Carquinez Bridge was granted by the Board of Supervisors of Contra Costa County on February 5, 1923, and will expire on or about March 5, 1948.

The franchise for the Antioch Bridge was granted by the Board of Supervisors of Contra Costa County on June 4, 1923, and will expire on or about July 4, 1948.

Both franchises provide that upon their expiration the title to the toll bridge shall revert to the adjacent counties without the payment of any compensation to the Company.

Hence, only slightly in excess of ten years remain before American Toll Bridge Company will lose its property in both bridges.

It is this feature which makes the case a particularly serious one to the Company. If the Company's tolls are now cut too deeply, the Company probably can never make up the loss and will be unable to meet its obligations to its bondholders and stockholders.

The Carquinez and the Antioch Bridges have been and are owned and operated as two parts of the single trans-

[fol. 66-3] portation system of American Toll Bridge Company. These bridges are located only 25 miles apart and serve in major part the same territories and the same traffic.

The Carquinez Bridge is now being operated at a modest profit but the Antioch Bridge is being operated in the red.

The Commission has chosen to fix tolls for the Carquinez Bridge alone. This action has apparently been taken in the belief that the Commission can cut much deeper into the existing tolls if it considers the Carquinez Bridge alone than though it fixed rates for both bridges of this single transportation system.

In the present proceeding, the Commission has reduced tolls for the Carquinez Bridge alone from 60¢ per automobile plus 10¢ per passenger to 45¢ per automobile plus 5¢ per passenger. The record shows an average of 2.2 passengers per automobile. Accordingly, the Commission's reduction is from an average of 82¢ per automobile and passengers to 56¢, being a reduction of 26¢ per average automobile and passengers.

This is a reduction of 31.7%.

On the last page of its Decision, the Commission holds out the threat or the promise of further loss of revenue by reductions in the Company's freight rates.

The Company now sets forth specifically each of the following matters as ground or grounds on which it considers [fol. 66-4] the Commission's Decision to be unlawful:

## II

### Exclusion of Antioch Bridge

#### 1. The Facts

On August 27, 1937, the Railroad Commission, on its own motion, in Case No. 4244, instituted an investigation into the rates, rules and regulations of American Toll Bridge Company, San Francisco Bay Toll Bridge Company and Dumbarton Bridge Co., owning and operating toll bridges across the waters of San Francisco Bay. The Order specifically mentioned both the Carquinez and the Antioch Bridges of American Toll Bridge Company.

Thereafter, on October 4, 1937, the Commission, in Case No. 4259, instituted another investigation into the rates, rules and regulations of American Toll Bridge Company



alone and confined to the operation of the Carquinez Bridge.

The initial hearing in both Cases was thereafter set for October 26, 1937. At that time, counsel for American Toll Bridge Company made a formal motion to consolidate Cases 4244 and 4259 for hearing and decision, in so far as American Toll Bridge Company is concerned, so that the Commission would make its ruling on the rates, rules and regulations to be charged for transportation over both the Carquinez and the Antioch Bridges. (Tr. 4-9.)

In support of his motion, counsel pointed out that American Toll Bridge Company owns and operates both the Carquinez and the Antioch Bridges and also, through a subsidiary, the Martinez-Benicia Ferry; that the franchises for both the bridges were granted early in 1923 and that in each case the franchise runs until 1948; and that each franchise provides that at its termination the property of the toll bridge shall revert to the adjacent counties without charge.

Counsel further pointed out that both the Carquinez and the Antioch Bridges were financed and constructed and are owned and operated by the same company; that they both cross the same water barrier, that is, the Carquinez Straits and the San Joaquin River, at points which are only about 25 miles apart, and that the Martinez-Benicia Ferry operates across the Carquinez Straits at a point about 8 miles East of the Carquinez Bridge; that both of the bridges serve substantially the same territory, that is, the San Francisco Bay territory on the South and the Sacramento Valley and the Counties of Sonoma, Solano, Napa and Lake on the North; and that although certain of the traffic is peculiar to the one or the other of the two bridges, they are, as far as the major traffic is concerned, distinctly competitive.

Counsel also pointed out that the operations of the Antioch Bridge have been less satisfactory, financially, than the operations of the Carquinez Bridge, and that if the rates of the Carquinez Bridge are considered alone without regard to the earnings of the combined system, an injustice would inevitably be done to American Toll Bridge Company and to the service which it renders.

[fol. 66-6] The Commission did not then rule on the motion but took the same under advisement. (Tr. 10.)

In its Decision herein, the Commission, without giving any reason for its action, denied this motion. The Commission merely said that "it has been decided" to limit its



decision and order to the Carquinez Bridge. (Decision, pages 3-4.)

The Decision shows on its face that in determining the tolls to be charged for transportation of automobiles and passengers over the Carquinez Bridge, the Commission confined its consideration to that bridge alone. After making certain preliminary observations, which do not enter into the computation of the rate, the Commission, on pages 8-9 of the Decision, proceeds to work out the rate. All the figures there referred to by the Commission are figures relating exclusively to the Carquinez Bridge. No figure there shown, whether it relates to a fair rate basis or to revenues or operating expenses or taxes or amount available for return on investment, relates to the Antioch Bridge. All of these figures relate to the Carquinez Bridge alone.

Furthermore, the rates fixed in the Decision are rates made specifically applicable to the Carquinez Bridge alone.

While the Decision states (page 4) that in fixing rates for traffic over the Carquinez Bridge, consideration would be given to the effect of such rates on the Company as a whole, this statement is obviously an inadvertence. The computations resulting in the rate and the rate fixed [fol. 66-7] relate exclusively to the Carquinez Bridge. The Decision says nothing about what the rate on the Antioch Bridge will be or of the effect of the reduced rates on the financial situation of the American Toll Bridge Company as a whole.

## 2. Inevitable Effect of Decision on Tolls of Carquinez Bridge, Antioch Bridge and Martinez-Benicia Ferry

The inevitable effect of the Decision, if it becomes effective, will be as follows:

(1) The tolls charged for automobiles and passengers moving across the Carquinez Bridge will be the very minimum tolls which the Commission thought it could establish without being subject to the condemnation of the courts:

(2) As the Antioch Bridge serves substantially the same territory and the same traffic as the Carquinez Bridge, the inevitable effect of the Decision, if it stands, would be to force the Company to reduce the Antioch Bridge tolls to the same level as the Carquinez Bridge tolls, and thus to still further weaken the financial condition of the Company.

Exhibit 1, introduced by the Commission's own witness Mr. Coleman, shows (page 23) that the Antioch Bridge operated in the red in the years 1926, 1927, 1928, 1933, 1934, 1935 and 1937.

(3) As the Martinez-Benicia Ferry is competitive with the two toll bridges, it would be necessary for this sub [fol. 66-8] sidiary of the American Toll Bridge Company to reduce the ferry tolls to at least as low as those charged by the two toll bridges. Heretofore, the ferry tolls were 45¢ per automobile plus 10¢ per passenger, the automobile rate being 15¢ less than that of the toll bridges. Mr. Lester S. Ready testified that the inevitable effect of reducing the toll bridge rate to 50¢ per automobile with five passengers would be to force a reduction in the tolls of the ferry to such an extent that the ferry would not longer pay operating expenses. (Tr. 692-4; Exh. 128.)

Thus, by limiting its consideration to the only profitable one of these three transportation agencies and reducing rates to the farthest extent possible on that one agency considered alone, the inevitable effect of the Commission's decision would be to drive down the revenues and the net income of American Toll Bridge Company to a point far below what any court would sustain. The property of American Toll Bridge Company would thus unquestionably be confiscated.

The fair and the lawful thing to have done would have been for the Commission to have considered the entire transportation properties of American Toll Bridge Company and to have established rates which would have yielded a fair return on the entire property of the Company devoted to the service of transportation.

The Decision as rendered by the Commission, is unfair and unjust, is contrary to the Commission's own traditions [fol. 66-9] and policy and violates the rights of American Toll Bridge Company under Section 1 of Article XIV of the Amendments to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of California.

### 3. The Decision is Contrary to the Commission's Own Traditions and Policy

Thus, in connection with electric rates, it has always been the Commission's policy to consider the rates of an entire

system, not merely considering the fat and leaving out the lean, but considering the two together. Hence, the electric rates for city areas have been fixed by the Commission somewhat higher than would have been the case if the city areas had been considered alone.

The same principle has been applied by the Commission in natural gas rate cases. Thus, in the famous Pacific Gas Natural Gas Case, decided by Commissioner Seavey on November 13, 1933 (39 C. R. C. 49), the Commission considered at some length the question whether it would continue its former policy of correlating the city with the urban territory, that is, the fat with the lean. Commissioner Seavey thereupon said (page 55):

"It will be the endeavor to make all adjustments in the spread of rates that the record indicates are equitable, but no change in the general policy heretofore adopted will be recommended".

The same principle was applied in *City of San Diego v. San Diego Consolidated Gas and Electric Company*, 37 [fol. 66-10] C. R. C. 167, decided on February 15, 1932. In this decision, written by Commissioners Seavey and Carr, the Commission provided higher rates for the electric properties than would have been allowed if those properties had been considered alone. The Commission considered the entire business, including the less profitable natural gas business, and for that reason fixed somewhat higher rates for the electric properties than otherwise would have been the case, in order to carry the less profitable gas properties.

As far as telephone rates are concerned, this Commission has always provided somewhat higher rates for the more populous exchanges and for toll service than would have been the case had they been considered alone, the purpose being to help carry the lean exchanges in the less thickly populated territory.

In the case of the Carquinez and the Antioch Bridges, the situation comes clearly within the Commission's long-established rule.

The two bridges constitute one transportation system rendering a complementary and unified service in which the Carquinez Bridge serves primarily the more populous metropolitan area, while the Antioch Bridge serves primarily a neighboring less populous rural area.

They serve the same general territory, they are competitive with one another, they are owned and operated by the same company, were financed and constructed by the same [fol. 66-11] company with bond issues jointly covering both properties, and they are clearly parts of one and the same enterprise.

The Commission's Decision, in fixing rates for the Carquinez Bridge alone, violates the Commission's long-established policy, to the very substantial injury of American Toll Bridge Company.

4. The Commission's Action Deprives American Toll Bridge Company of Its Property Without Due Process of Law in Violation of Guarantees of the Federal and the State Constitutions.

From the facts hereinbefore stated, it seems too clear for further discussion that the Commission's action in denying counsel's motion and in fixing rates for the Carquinez Bridge alone was unfair and arbitrary and deprived American Toll Bridge of its property without due process of law in violation of the Company's rights under Section 1 of Article XIV of the Amendments to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of California.

### III

#### Failure to Give Fair Return on Fair Value of Carquinez Bridge

1. Calculations of Commission in Computing Its Rate

While the Commission did not, in its Decision, follow the usual course of setting forth clearly the computations leading to its conclusion, it is a fair inference from its [fol. 66-12] Decision that the steps leading to its conclusion were as follows (Decision, pp. 8-9):

In computing the rate base, the Commission took the figure of \$7,863,451, which represents a portion only of the book cost. From this figure, the Commission deducted \$375,000 for unnamed items, thus securing a rate base of \$7,488,451.

The Commission then took Mr. Hunter's figure of \$551,946 as the amount which would have been available for

return on the rate base if the 50¢ toll charged by the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge had been effective on the Carquinez Bridge throughout the year 1937.

Dividing \$551,946 by \$7,482,451, the Commission then secured a return of 7.37%, which figure it rounded out to 7.5%.

The Commission then established the "slightly higher" rate of 45¢ per automobile plus 5¢ for each passenger on foot or in vehicles and ordered the Company to charge this rate, beginning March 1, 1938.

We shall now show that in making these computations the Commission made grave errors to the serious detriment of American Toll Bridge Company.

## 2. Errors in Commission's Computations

### (1) Rate Base:

Said sum of \$7,863,451 is the lowest figure in the record relating to original or reproduction costs of the Carquinez, [fol. 66-13] Bridge (disregarding the thoroughly discredited estimates of Mr. Mitchell). The figures are as follows:

Book cost (without including any land or furniture and fixtures or a proper allowance for interest during construction or any cost of developing the business)	\$7,863,451
Corrected original cost (including a proper allowance for interest during construction)—Gerwick and Ready, Exh. 117, p. 27	8,332,622
Reasonable historical cost—Gerwick and Ready, Exh. 117, p. 27	8,139,307
Reproduction cost new—Gerwick and Ready, Exh. 118, p. 25	8,743,231

None of the above figures include any allowance for the cost of developing the business, for which item, as we shall show later, a minimum amount of at least \$300,000 must be added.

Without waiving the right to urge that a higher rate base should be adopted and merely for the purpose of following through on the Commission's own figure of \$7,863,-



451, we shall now point out the items which were obviously erroneously omitted therefrom, as follows:

a. Land:

The Commission's said figure contains no allowance whatsoever for land. The amount of the omitted item is \$66,834.62. (Ready, Tr. 620-1; Exh. 117, pp. 27-8.)

b. Furniture and fixtures:

The Commission omitted these items. They amount to \$19,668.23 for the Carquinez Bridge. (Ready, Tr. 621, Exh. 117, p. 27.)

[fol. 66-14] c. Interest during construction:

The Commission's said figure allows only \$688,092.56 for interest during construction. The amount is grossly understated. Mr. Mitchell, one of the Commission's own witnesses, admitted that this amount is too low by \$415,541.44 and that the correct amount should be \$1,103,634. (Mitchell, Tr. 241-2; Exh. 16, pp. 15, 19.)

Mr. Ready reported the somewhat lower figure of \$1,070,761 (Ready, Tr. 634-42; Exh. 117, p. 27; Exh. 119) which we shall use herein.

d. Cost of developing the business: going concern value:

The Commission allowed nothing whatever for the cost of developing the business, sometimes called going concern value.

Up to the time of this Decision, it had always been the Commission's policy, in dealing with a new public utility, to make a reasonable allowance over a reasonable period of time, for the cost of developing the business of such new public utility. This is to permit the new enterprise to develop sufficiently to pay the costs of running the business.

Thus, in *Monahan v. San Jose Water Company*, 4 C. R. C. 1101, President Eshleman said (p. 1115):

"I am firmly of the opinion that necessary development cost, which is interest on the idle money in a plant during [fol. 66-15] a reasonable time in which it may reasonably



be expected not to be fully productive, is as much a part of the cost of the plant as an expenditure for pipe or right of way. What I mean definitely is this: There is presented a field for the operation of a public utility. It is known that this utility after it is constructed and ready to begin operation can not from the beginning earn a reasonable amount on the investment. A fair degree of wise foresight prepares the business man for these losses in the early days of his business, and if such losses are not to be recouped from earnings after the plant has reached maturity, then the investor can not be expected to make such investments. But this principle does not justify the investment of money in an enterprise that does not give promise of reaching a paying basis within a reasonable time. If the business is well conceived, there will be a uniform approach from the very beginning of the operation of the completed enterprise to a fully paying basis. During the development period, therefore, there will be yearly a decreasing amount of the capital investment which is not returning a reasonable amount, and the interest upon this decreasing amount of idle capital is a part of the cost of the property which must be foreseen and prepared for by the investor and must be allowed by the rate-fixing body."

In *Town of Antioch v. Pacific Gas and Electric Company*, 5 C. R. C. 19, the Commission, after quoting from *City of [fol. 66-16] Palo Alto v. Palo Alto Gas Company*, 2 C. R. C. 300, 310 and from the *Monahan Case*, supra, continued (p. 37):

"In *City of Milwaukee vs. Milwaukee Electric Railway and Light Company* (Vol. 10, Wisconsin Railroad Commission Reports, p. 1), one of the most recent and extensive of the decisions of the Railroad Commission of Wisconsin, the Commission, at page 122, says:

"It is conceded that in addition to the value of the tangible property some allowance is properly made for the cost of building up the business, or the losses sustained before the property has been placed upon a paying basis. Previous decisions of this commission have recognized the necessity of compensating for such early losses and the existence of a going concern value is recognized by both parties to the complaint in the present case. (Citing cases)."

"In *People vs. Willcox*, 141 N. Y. S. 677, Mr. Justice Miller defines 'going value' as follows:

"I define 'going value' for the purposes as involved in this case to be equal to the deficiency of net earnings below a fair return on actual investment due solely to time and expenditures reasonably necessary and proper to the development of business and property to its present stage; and not comprised in the valuation of the physical property. "Going value" is to be appraised by showing the actual experience of a company, the original investment, its earnings from the start, the time actually required and expenses incurred in building up a business, all expenditures not reflected by the present condition of physical property, the extent to which bad management or other causes prevent or deplete earnings, and any other facts bearing on the question, keeping in mind that the ultimate fact to be determined is not the amount of expenditures, but the deficiency in a fair return to investors due to the causes under consideration."

"It will be noted that in each of the foregoing quotations the basis used is that of actual expenditures, thus following the investment theory. If the reproduction value theory is followed, experts at times estimate the expenditures which would probably be made before the hypothetical or comparative plan to which they refer should have been placed upon an earning basis identical with the existing property. These estimates are largely guesswork and are most unreliable, and will be given very little weight by this Commission, particularly if evidence of the actual facts can be secured. The best evidence of what should be allowed for developing the business is the money which has actually been expended for that purpose."

To the same effect, see also

*City of Palo Alto v. Palo Alto Gas Company*, 2 C. R. C. 300 (Commissioner Thelen);

*Application of Southern Sierras Power Company and Holton Power Company*, 18 C. R. C. 810, 837 (Commissioner Brundige);

[fol. 66-18] *Rates of Pacific Gas and Electric Company for natural gas*, 39 C. R. C. 49, 65 (Commissioner Seavey).

There are many decisions of the Supreme Court of the United States and of the lower Federal courts to the same effect.

A number of the leading decisions are cited in *McCardle v. Indianapolis Water Co.*, 272 U. S. 400, in which case the Court said (p. 414):

"The decisions of this court declare: 'That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use.' *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 165; *Denver v. Denver Union Water Co.*, 246 U. S. 178, 191, 192. And see *National Waterworks Co. v. Kansas City*, 62 Fed. 853, 865; *Omaha v. Omaha Water Co.*, 218 U. S. 180, 202, 203, and cases cited."

The point is too clear to justify the citation of further authority.

On the subject of the amount to be added for this item, each case is, of course, governed by its own facts. However, an allowance of at least 10% of the cost of reproducing [fol. 66-19] new the physical properties is quite customary, particularly in the more recent decisions.

In the present case, we have a remarkably complete record of all receipts and all disbursements in connection with the operations of both the Carquinez Bridge and the Antioch Bridge and the Company as a whole, from the very first day of the operation of the respective bridges through the year 1937. (Ready, Exh. 132, Tables No. 4, 5, 6; see also, although in lesser detail, Exh. 1—Coleman, and Exh. 19—Hunter.)

If the very low figure of the deficiency of the income of the Carquinez Bridge below the 9% cost of money, with interest, is taken for the first five years of operation, the result is the sum of approximately \$300,000. This sum is less than 5% of the cost of reproducing new the physical property. (Exh. 118, p. 25) and is most reasonable under any accepted standard.

The Commission's failure to make any allowance for this item constitutes clear error of law.

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With the above additions, the Commission's figure becomes—

Figure used by Commission	\$7,863,451
Land	66,835
Furniture and fixtures	19,668
Interest during construction—amount added to correct error	382,668
Cost of developing business—minimum allowance	300,000
	<hr/>
	\$8,632,622

[fol. 66-20] On the assumption that we start with the Commission's own figure and make only the necessary additions for omitted items, we thus have a minimum rate base of \$8,632,622.

(2) Money available for return on Rate Base (under 50¢ toll):

In estimating the amount of money which would have been available for return on the rate base, if the 50¢ toll had been effective, the Commission (Decision, p. 8) referred to Exh. 23 (Hunter) and Exh. 134 (Ready).

Mr. Hunter's exhibit referred exclusively to the year 1937. The Commission, however, was fixing a rate for 1938. (Decision, pp. 8-9.) For reasons which we shall shortly state, Mr. Hunter's figures for 1937 should not be accepted for 1938.

Mr. Ready's exhibit reports not merely what would have been the effect of applying the 50¢ rate to the actual business of 1937 but also what would be the estimated result in 1938 and in each of the subsequent years to the end of the franchise in 1948.

Mr. Ready's testimony is the only evidence in the record as to the result of 1938 operations under an assumed 50¢ toll.

In referring to Mr. Ready's exhibit, the Commission (Decision, p. 8) states the same correctly down to and including the figure of \$629,799 for "net income before income taxes". (Exh. 134, p. 2, year 1938.) Then, however, the Commission either made a gross error in arithmetic or, without any warrant whatever, took the income tax figure



[fol. 66-21] of \$54,309 for 1939 and shifted it back to 1938 in lieu of Mr. Ready's figure of \$133,237.

Mr. Ready estimated the number of dollars which the Company would be required to pay for operating expenses and taxes of the Carquinez Bridge, year by year. His figure of \$133,237 to be paid in 1938 for the sum of federal income taxes and state franchise tax is correctly computed.

The amount of money reported by Mr. Ready is available on 1938 traffic on an assumed 50¢ toll, for return on a proper rate base, was \$496,562 and not \$575,000 as stated by the Commission. (Decision, p. 8.)

The Commission's statement concerning Mr. Ready's figures is either a gross arithmetical error or an absolutely unwarranted attempt to show that the money which would be required to be paid out by the Company in 1938 would be almost \$80,000 less than would actually be the case.

At page 8 of the Decision, the Commission says:

"A reduction in rates will stimulate the traffic over the bridge, although the extent of course, cannot be estimated with exactitude."

We believe it proper to point out here that Mr. Hunter (for the Commission) and Mr. Ready (for the Company) agreed that under a 50¢ toll the stimulation would be 13½% and that the final figures of Mr. Hunter and Mr. Ready include and account for such stimulation, to its full extent. Under the record in this case, no further revenue can properly be added, by reason of stimulation of traffic, to the [fol. 66-22] figures already reported by the two engineers.

We now point out why Mr. Hunter's 1937 figures can not properly be used in computing 1938 revenues and expenses:

#### a. Operating revenues.

In Exh. 23, Mr. Hunter reports an actual operating revenue of \$1,542,058 for 1937, assumes that under a 50¢ toll there would have been a reduction of \$385,183 in that revenue and hence advises that the operating revenue would have been the difference between these two figures, namely, \$1,156,875.

These figures can not be used in estimating 1938 revenues for the reason, among others, that the 1937 figures include revenue from 100,000 to 110,000 vehicles containing "curi-

osity travelers" who took the trip due to the opening of the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge in 1937. That traffic will not exist in 1938. (Ready, Tr. 717-18.)

b. Operating and Maintenance Expense:

Mr. Hunter's 1937 figures naturally do not include any part of the expenditure of \$50,000 for additional riprap which must be placed in 1938 and 1939 to protect certain of the piers of the Carquinez Bridge. (Gerwick, Tr. 610-11.) Mr. Ready spread this expenditure over a period of five years, assigning \$10,000 to the maintenance expenses [fol. 66-23] of 1938. (Ready, Tr. 730; Exh. 132, Table 4.) This method of handling the matter is at least fair to the Commission.

c. Amortization of Investment (Depreciation):

Mr. Hunter's figure of \$200,465 is too low by at least \$6,000 because he based it on the discredited Mitchell figure of investment.

d. Federal income tax:

Mr. Hunter's figure of \$98,810 for Federal income tax can not be used because it does not properly compute the Federal income taxes chargeable to the Carquinez Bridge. Mr. Ready's figure of \$108,511, is correctly calculated on the 1937 income. (Exh. 134, p. 2, year 1938.)

There are other items in Mr. Hunter's 1937 figures which can not be used in 1938 computations, but we believe it unnecessary to pursue the subject further.

3. Return under Rate Fixed by Commission

We turn now to the question of the amount of money which would be available for return on a proper rate base, if the rate of 45¢ per automobile plus 5¢ per passenger were made effective throughout the year 1938.

The computation is simple. All that is required is to take Mr. Ready's Exh. 134, page 2, year 1938, and make the necessary changes in operating revenue (due to the application of the new tolls) and in gross revenue tax, [fol. 66-24] which is 2% of the operating revenue.

In computing the new operating revenue, a slight reduction must be made from the 13½% assumed stimulation of

traffic, due to the fact that the new rate is "slightly higher" than the 50¢ rate on which Mr. Hunter and Mr. Ready based their calculations. We shall assume a 10% stimulation of traffic under the new rate, if it were made effective.

The effect of the Commission's rate, as applied to the assumed 1938 traffic, would then be as follows:

### Carquinez Bridge

1938

#### Operating Revenues:

Tolls	\$1,135,277	
Rents and miscellaneous	8,243	\$1,143,520

#### Direct Operating Expense:

Operation and maintenance	146,700
Gross revenue tax (2%)	22,706

Total	169,406
General expenses	63,852

Total direct and general expenses	233,258
Amortization of investment	206,727

Total expenses plus amortization	439,985
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Net income before income taxes	703,535
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#### Income taxes:

Federal income tax	108,511
State franchise tax	24,726

Total income taxes	133,237
Total expense	573,222

Net income available for return on rate base	\$570,298
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[fol. 66-25] The record shows that the actual cost of money to American Toll Bridge Company was slightly in excess of 9%.

On said rate base of \$8,632,622 a net income of \$570,298 would yield a return of only 6.60%.

Even if we deduct from said sum of \$8,632,622 the sum of \$375,000 appearing on page 8 of the Commission's Decision and representing unnamed items, the rate base would become \$8,257,622, on which amount a net income of \$570,298 would yield a return of only 6.9%.

4. In View of the Cost of Money to American Toll Bridge Company, a Return of Only 6.6% or 6.9% on the Fair Value of the Carquinez Bridge Would be Confiscatory

The record shows that the construction of the Carquinez Bridge was a hazardous enterprise. There were grave doubts as to whether the bridge could be constructed at all. The Carquinez Bridge was the pioneer among the toll bridges across San Francisco Bay.

There were further grave doubts as to whether the bridge, if completed, would attract sufficient patronage to justify its construction from a financial point of view. The population in the San Francisco Bay territory was not as yet "bridge-minded" (to borrow a phrase from Dean Derleth, the chief engineer on this great project).

These hazards, physical and financial, naturally found reflection in the matters of whether the funds necessary for the construction could be secured at all and, if so, what [fol. 66-26] the cost of the money would be.

Mr. Coleman, financial expert for the Commission, testified that if the discount and expense in connection with the issue of its bonds by American Toll Bridge Company be amortized on the straight line basis, the cost of the Company's bond money was 9.71%. (Exh. 1, p. 17.)

If said discount and expense were amortized on the six per cent sinking fund basis and the capital stock which it was necessary to issue to the investment houses which underwrote the bonds be disregarded, the average cost of the bond money would be reduced to approximately 8.6% (Exh. 1, p. 17). However, Mr. Coleman further testified that the underwriters would not take the bonds unless this particular stock was issued to them and that it seemed to be necessary to issue the stock as part of the sale of the bonds (Coleman, Tr. 295). Under the circumstances, it would seem clear that the value of this stock at that time must be included in the cost of the bond money.

Mr. Ready reported that the cost of bond money to American Toll Bridge Company, bearing in mind both the interest charges and the amortization of bond discount and expense, was as follows:

	Cost of Money
On straight line amortization	9.71%
On sinking fund amortization	9.67%

[fol. 66-27] The Decision herein states (p. 9) that "when tested upon the bases usually followed by the Commission" a return of 7.5% upon a proper rate base would be proper in this case.

This statement is directly contrary to our understanding of the policy which the Commission has, throughout the years, followed in the matter of the rate of return.

We understand that it has been the uniform policy of the Commission to allow a rate of return somewhat in excess of the cost of money utilized by the utility in the construction of its enterprise.

Mr. Hunter, the Commission's own witness, so testified. At page 331 of the transcript of the testimony, appear the following questions and answers:

"Q. (by Mr. Thelen): As a matter of fact, isn't it the policy of the Commission to ascertain the cost of money and then to allow something in excess of that? Hasn't that been the policy throughout all the years?"

"A. (by Mr. Hunter): I rather think so."

"Q. Then in this case, Mr. Hunter, don't you think when it comes to the fixing of the actual rate, that it would be proper for the Commission to ascertain the cost of money and then make some additional allowance over that?"

"A. Well, I should say the Commission should follow its precedent as much as it can if they have a case that is anywhere comparable."

The published volumes of the Commission's Opinions and Orders contain literally hundreds of decisions which [fol. 66-28] bear out the truth of Mr. Hunter's testimony and of our position on this subject.

Mr. Ready, who was for a number of years the Commission's chief engineer, and who is thoroughly familiar with



the Commission's practice and policies, submitted Exh. 129, on the subject of the relationship between the cost of money and the rate of return found to be reasonable by the Commission. In this exhibit, Mr. Ready gives reference to a large number of decisions of the Commission in rate cases. He shows, in each instance, the cost of money to the utility and the rate of return found by the Commission to be reasonable as to that utility.

Referring to the largest and most substantial public utilities in the state, Mr. Ready found that the rate of return found by the Commission to be reasonable as to them has averaged 1.15 times the cost of their money. (Ready, Tr. 695-704; Exh. 129.)

In the case of a hazardous and pioneer enterprise such as American Toll Bridge Company; the ratio should, of course, be somewhat greater. However, taking said ratio of 1.15 and applying it to the cost of money to American Toll Bridge Company, Mr. Ready reported that a fair rate of return would be as follows:

	Rate of Return
Money cost based on non-inclusion of bonus stock— $1.15 \times 8.48\%$	9.75%
Money cost based on inclusion of bonus stock— $1.15 \times 9.07\%$	10.43%

[fol. 66-29] He then concluded that a 10% return would be a reasonable rate of return for American Toll Bridge Company on the moneys invested by the stockholders and bondholders. (Ready, Tr. 704; Exh. 129, p. 5.)

Even bearing in mind that the properties of American Toll Bridge Company are being amortized on a 6% sinking fund basis, under which the moneys in the depreciation reserve are increasing, from year to year, a fair rate of return for the year 1938 was nevertheless reported by Mr. Ready to be somewhat in excess of 9%, which figure would also be the average fair rate of return throughout the life of the franchise. (Ready, Tr. 705-6.)

In the light of these facts and this testimony, no argument is required to show that a return of only 6.6% or even 6.9% on the fair value of the property of the Carquinez Bridge would be confiscatory.

### 5. Summary as to Fair Return, Carquinez Bridge

The situation as to fair return as to the Carquinez Bridge may be succinctly summarized as follows:

(1) While the Decision says that the tolls therein established will yield a return "slightly higher" than 7.5% on a proper rate base for the Carquinez Bridge, it is obvious, when correction is made for numerous errors and omissions, that the return would not be in excess of 6.6% or, at the most, 6.9%.

(2) It has been the Commission's policy throughout the [fol. 66-30] years to allow a return somewhat in excess of the cost of money to the utility. On the average, the return has been 1.15 times the cost of money for well established utilities. However, in the present case, in dealing with a hazardous utility, the Commission is not merely denying anything above the cost of money, on its own figures, but is cutting deep below the cost of money.

(3) The Decision clearly confiscates the property of American Toll Bridge Company in the Carquinez Bridge and violates the Company's rights under Section 1 of Article XIV of the Amendments to the Constitution of the United States and under Sections 13 and 14 of Article I of the Constitution of California.

## IV

### Failure to Give Fair Return on Fair Value of Carquinez and Antioch Bridges

As we have hereinbefore pointed out, any reduction in the tolls charged for transportation on the Carquinez Bridge must necessarily be followed by a similar reduction in the tolls of the Antioch Bridge.

Furthermore, if the tolls fixed by the Commission become effective as to the Carquinez Bridge, the Martinez-Benicia Ferry will no longer be able to make even operating expenses. (Ready, Tr. 692-4.)

[fol. 66-31] In this connection, the following news item appearing in the San Francisco Examiner of February 11, 1938, is significant:

#### "Carquinez Bridge Rate Cut Protest

Reduction by the Railroad Commission of the Carquinez Bridge fares from 60 cents per car and 10 cents per pas-

senger to 45 cents and 5 cents yesterday brought a protest from the Antioch Chamber of Commerce.

The protest was based on the fact that the higher rate is still in effect on the Antioch Bridge.

At Martinez, the Chamber of Commerce began steps to bring about a reduction in ferry tolls, which are 5 cents higher per passenger."

The above results, as far as the Antioch Bridge and the Martinez-Benicia Ferry are concerned, will follow just as definitely and inevitably as though the Commission had frankly included these additional transportation agencies in its investigation and had made its order directly applicable to them.

In what we are about to say, we shall confine ourselves to the business and property of American Toll Bridge Company in so far as the same relate to the Carquinez Bridge and the Antioch Bridge.

### 1. Rate Base

The reasonable historical cost of the Antioch Bridge is \$1,597,789.00 (Gerwick and Ready, Exh. 120, p. 4).

If the same method of determining the cost of developing the business is used as to the Antioch Bridge as we herein [fol. 66-32] before used with reference to the Carquinez Bridge (income below a 9% cost of money, 1926 to 1929, incl.), the minimum amount to be added for this item is found to be \$550,000.00.

On the basis hereinbefore used for determining minimum rate base for the Carquinez Bridge, a minimum rate base for both bridges together would be as follows:

Carquinez Bridge—minimum rate base	\$8,632,622
Antioch Bridge—reasonable historical cost	1,597,789
Antioch Bridge—cost of developing the business	550,000

Rate base for both bridges	\$10,780,411
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### 2. Return under Rate Fixed by Commission

The amount of money which would be available in 1938 for return on a fair rate base, in the event that the rate fixed by the Commission should become effective as to both the Carquinez and the Antioch Bridges, can be readily ascertained by recourse to Mr. Ready's Exh. 134.

It will merely be necessary to turn to page 4 of that

exhibit, relating to American Toll Bridge Company's operation of both toll bridges, year 1938, and make the necessary changes in operating revenue (due to the application of the 45¢ plus 5¢ proposed tolls) and in the item of gross revenue tax.

[fol. 66-33] Here, also, we shall assume a 10% stimulation in the business of both bridges, combined, resulting from the assumed effectiveness of the new tolls prescribed by the Commission.

The effect of the new tolls, applied to both bridges, on 1938 traffic, would be as follows:

Carquinez and Antioch Bridges  
1938

Operating Revenue:

Tolls	\$1,241,976	
Rents and miscellaneous	8,363	\$1,250,339

Direct Operating Expenses:

Operation and maintenance	189,885	
Gross revenue tax (2%)	24,839	

Total	214,724	
General Expenses	69,860	

Total direct and general expenses	284,584	
Amortization of investment	244,887	

Total expenses plus amortization	529,471	
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Net income before income taxes	720,868	
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Income taxes:

Federal income tax	92,173	
State franchise tax	22,375	

Total income taxes	114,548	
Total expense		644,019

Net income available for return on rate base		606,320
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On said rate base of \$10,780,411 for the combined Carquinez and Antioch Bridge properties, a net income of \$606,320 would yield a return of only 5.6%.

[fol. 66-34] If we again deduct from the Carquinez Bridge rate base the sum of, \$375,000, merely to follow the Commission in its calculations, the above combined rate base would become \$10,405,411, on which amount a net income of \$606,320 would yield a return of only 5.8%.

### 3. Effect of Commission's Decision Would be to Confiscate Property of American Toll Bridge Company in Both Carquinez and Antioch Bridges

Bearing in mind the cost of money to American Toll Bridge Company and the fact that the effect of making the Commission's Decision applicable to both bridges would be a combined return in 1938 more than 2% below the bare cost of money, without any additional allowance whatever, we believe that it would be an unjustifiable expenditure of time and effort to pursue this point further.

Beyond any possibility of a doubt, the application of the Commission's tolls would confiscate the transportation system of American Toll Bridge Company, consisting of the Carquinez and the Antioch Bridges, and would violate the Company's rights under Section 1 of Article XIV of the Amendments to the Constitution of the United States and under Sections 13 and 14 of Article I of the Constitution of California.

[fol. 66-35]

## V

Under Commission's Tolls American Toll Bridge Company Would be Unable to Meet its Requirements to its Bondholders and Stockholders

The Carquinez and Antioch Bridges of American Toll Bridge Company are "wasting assets". At the expiration of the franchises in 1948, the bridges will become the properties of the Counties of Contra Costa and Solano without the payment of any compensation to American Toll Bridge Company.

Unless American Toll Bridge Company has by that time fulfilled its obligations to its bondholders and its stockholders, it will never be able to do so.

In obvious recognition of a duty to see to it that the Company's tolls are not cut so drastically as to make the Com-



pany impotent to fulfill said obligations, the Commission, through Mr. Coleman, introduced Exh. 22 entitled "Estimated Cash Requirements." The purpose of this exhibit was to show that the Company could suffer a substantial reduction in its revenues and still be able to pay principal and interest on its bonds and an 8% dividend on its stock and retire its stock at par.

The exhibit ignored the fact that up to December 31, 1935 no dividends had ever been received by the stockholders and that the principal amount of these unpaid dividends at 8% amounts to \$2,404,600.00.

The exhibit set forth merely an "average year", without reference to the actual cash requirements of any particular [fol. 66-36] year. It assumed that stock could be retired from property which was not cash and as to which serious doubts exist as to when it could be converted into cash and how much cash could be realized therefrom.

Provision was made for the amortization of the bonds over a period of 10 years, whereas it is necessary, under the bond mortgage, to pay the same off completely within approximately 8½ years.

The exhibit spoke as of October 31, 1937. By December 31, 1937, the situation had already substantially changed, so that the computations of the exhibit could no longer be relied upon.

All of these matters and others were developed in cross-examination of Mr. Coleman (Tr. 303-318) and in direct examination of Mr. J. W. Haines, a partner in the firm of Haskins & Sells, who appeared as a witness for American Toll Bridge Company. (Tr. 666-685; 779-89.)

However, the presentation of the exhibit may be assumed to evidence a realization by the Commission of a responsibility in the case of a "wasting asset" different from and perhaps beyond that which exists in the usual case of a public utility whose franchises either extend over long periods or are without limit as to time.

After Exh. 22 had been presented, American Toll Bridge Company submitted, through Mr. Haines, Exh. 126, which is a statement, prepared with meticulous care and accuracy, showing the actual cash requirements, in each year from 1938 to June 30, 1948 in the event that American Toll Bridge [fol. 66-37] Company should undertake to meet its obliga-

tions on principal and interest of its bonds, pay 8% dividends on its capital stock and retire the stock at par by the time the Company's franchises will have expired.

In a subsequent supplemental exhibit (No. 136), Mr. Haines showed in great detail how all the computations in Exh. 126 on the important subject of the various classes of Federal taxes—capital stock, excess profits, normal income and undistributed profits—were made.

A comparison of the cash required, year by year, with Mr. Ready's estimates of the cash which would be available under the assumed 50¢ rate (Exh. 134, Table 4) shows that the 50¢ toll would have failed, by a wide margin, to enable the Company to meet its obligations to its bondholders and its stockholders, even if the failure to pay any dividends whatever to its stockholders during the period from June 1, 1927 to December 31, 1935 be entirely disregarded.

In the Decision herein, the Commission disposes of the matter with this single sentence (p. 9):

"Such a rate (i. e., the 45¢ plus 5¢ rate) *should* enable the company to meet its requirements under its trust indenture and amortization and dividend requirements."

The Decision refers to no evidence whatever in support of this general conclusion.

Attached to this Petition as Exhibit A, the Commission [fol. 66-38] will find a statement entitled "Estimated Operating Results—American Toll Bridge Company—1938-1948—Under Rates as per C. R. C. Decision." We have prepared this exhibit for the purpose of ascertaining whether or not the 45¢ and 5¢ rate will really enable the Company to meet its obligations to its bondholders and its stockholders.

The exhibit and the sources of its figures are readily understood. The operating revenue figures are secured by applying to the traffic shown in Exh. 134, Table 4, the new rate fixed by the Commission, assuming a 10% stimulation in auto traffic. The items of "total direct and general expenses" and "state franchise and federal income tax" are readily ascertainable from said Table 4 in Mr. Ready's Exh. 134 by adjustment for increased county, state and Federal taxes resulting from increased operating revenue.

The items for "bond interest and retirement" are the actual requirements under the Company's bond mortgage and are shown in Exh. 126 (Mr. Haines). The total num-

ber of shares of stock outstanding at the beginning of 1938 likewise appears in Mr. Haines' exhibit.

The remaining figures are easily understood. The money remaining at the end of each year, after the other obligations to bondholders and stockholders have been met, is simply used to retire capital stock at \$1.00 per share.

The exhibit shows that at the end of the franchise period [fol. 66-39] in 1948 the revenues from the rates now fixed by the Commission will have failed to retire 437,167 shares of stock of the par value of \$1.00 per share.

The exhibit further shows that said revenues will have failed to apply as much as a single dollar on the \$2,404,600 of dividends at 8% which the Company failed to earn and declare during the period from June 1, 1927 to December 31, 1935. Said figure of \$2,404,600 includes nothing whatever for interest.

Finally, the exhibit shows unretired capital stock at \$1.00 per share plus unpaid dividends, at the end of the franchise period, totaling \$2,841,767.

It thus appears that under the tolls now fixed by the Commission, the Company will fail by a very large sum to earn sufficient revenue to enable it to meet its obligations to its bondholders and stockholders.

## VI

### Impairment of Contract Obligations

The franchises for the construction of the Carquinez and Antioch Bridges were granted by the County of Contra Costa in the early part of 1923. The Carquinez Bridge franchise was granted by Ordinance No. 171, adopted on February 5, 1923, and the Antioch Bridge franchise was granted by Ordinance No. 175, adopted on June 4, 1923. Copy of the Carquinez Bridge franchise is part of the record in this case. It is attached as an exhibit to Exhibit 19.

[fol. 66-40] Each of these ordinances was adopted pursuant to authority vested by the Legislature in the County of Contra Costa under the Act of March 14, 1881 (St. 1881, ch. 68, p. 76). This Act, in granting to boards of supervisors the right to grant franchises for the erection of bridges on public highways across navigable streams, provided in Section 2 as follows:

"Sec. 2. The power to grant franchises to individuals, or corporations, to construct bridges, and the regulation of

tolls thereon, shall be exercised by the county on the left bank of all streams."

In 1923, subsequent to the time when said ordinances were adopted, the Legislature amended Sec. 2872 of the Political Code, expressly ratifying all franchises granted subsequent to March 14, 1881, for the construction of all bridges across straits, streams or creeks within the territory in which the Carquinez and Antioch Bridges are located.

It is, of course, well settled that a franchise creates a vested right by contract which cannot be impaired by subsequent legislation.

United States Constitution, Article I, Sec. 10;

Russell v. Sebastian, 233 U. S. 195;

Oro Electric Corporation v. Railroad Commission of California, 169 Cal. 466;

Postal Telegraph-Cable Company v. Railroad Commission of California, 200 Cal. 463.

The State may delegate to a subordinate political subdivision, such as a city or county, the right not merely to [fol. 66-41] regulate the rates of a public utility, but also the right to enter into a contract with such utility on the subject of rates. Such contract, when entered into, is binding on such political subdivision and on the State, as well as the public utility, and prevents the State and its political subdivisions from altering the terms of such contract. Such alteration is expressly forbidden by Section 10 of Article I of the Constitution of the United States, providing in part, that no State shall pass any law impairing the obligation of contracts. Section 16 of Article I of the Constitution of California contains a similar inhibition.

Detroit v. Detroit Citizens' Street Railway Company, 184 U. S. 368, 382;

Vicksburg v. Vicksburg Waterworks Company, 206 U. S. 496, 508;

Railroad Commission of California v. Los Angeles Railway Corporation, 280 U. S. 145, 151-2.

It is a question, in each case, of whether or not the State has, in fact, delegated to the subordinate political subdivision the authority to enter into such contract and of whether or not the political subdivision has, in fact, acted under that authority.

In the present case, the franchises for the construction of the Carquinez and the Antioch Bridges were subject to the provisions of certain sections of the Political Code, which are to be read into the contract between the State of California, acting through the board of supervisors of the [fol. 66-42] County of Contra Costa, and the grantees of said franchises. These provisions of the Political Code form part of the contract. We refer particularly to Sections 2845 and 2846 of the Political Code.

Section 2845 reads, in part, as follows:

"The board of Supervisors granting authority to construct a toll-bridge or to keep a public ferry, must at the same time:

"3. Fix the rate of tolls which may be collected for crossing the bridge or ferry which may raise annually an income not exceeding fifteen per cent on the actual cost of the construction or erection of the bridge or ferry, and such additional income as will provide for the annual cost of operation, maintenance, amortization and taxes of the bridge, or ferry."

Section 2846 reads as follows:

"License tax and rate of tolls, how fixed.—The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected."

Acting under the mandate of said Section 2845, the board [fol. 66-43] of supervisors of Contra Costa County, at the time when they granted the franchises for both bridges, fixed the rates of tolls which the grantees might collect and inserted the same in the ordinances granting the franchises.

Thereupon, under the specific provisions of Section 2846, the grantees of said franchises had vested contract rights not to have said tolls diminished during the term of 20 years, at any time,



"unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is *disproportionate* to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry."

The right to have the tolls inserted in the ordinance not diminished during the term of 20 years, except in the one situation specified in Section 2846, is a vested contract right of great value to the grantees of the franchises. Without such vested contract right, the Carquinez Bridge would probably never have been constructed.

In Section 2845, the Legislature itself has declared what it meant by the word "disproportionate" as used in the next section.

Construing Sections 2845 and 2846 together, it is clear that what the Legislature had in mind was that tolls which yield up to 15% on the cost of construction or erection, or the fair cash value thereof, together with the necessary repairs and maintenance, are not to be regarded as "disproportionate" [fol. 66-44] but that if and when the yield becomes more than 15% it will be deemed to be "disproportionate". In the latter event, even though this situation should develop within less than 20 years after the effective date of the franchise, the board of supervisors would have the right, under the contract, to reduce the tolls in the manner specified in the appropriate sections of the Political Code.

These contract provisions do not mean that American Toll Bridge Company is at this time necessarily entitled to a 15% return. They do mean, however, that the Company has a contract right to have the tolls specified by the board of supervisors of Contra Costa County in the ordinances granting the franchises not diminished by any public authority unless it should appear that the yield from such tolls has become in excess of 15%. In the present case, the record shows clearly that such yield has never approached as much as 15% and that at the present time it is very considerably below 15%.

The contract right thus conferred is one of transcendent importance to investors in the securities of toll bridge companies. If said Sections 2845 and 2846 are to be so construed so that a board of supervisors can at any time reduce tolls when the yield is such as, according to the passing whim or fancy of the board, is "disproportionate", then it

could not be expected that any sane investors would put their money into the stock or bonds of such concerns. The Legislature took care of this situation by itself setting the standard of what it meant by the word "disproportionate" so as to prevent public authorities from following their own [fol. 66-45] passing whim or fancy as to what they could do.

The facts of this case give pointed significance to the wisdom of the Legislature in itself definitely setting the standard to be followed by the public authorities.

Here we have a case in which several thousand Californians purchased stock of American Toll Bridge Company at \$2.00 per share in cash. Up to December 31, 1935, the stockholders received no dividend whatever on their stock. Approximately one-half the life of the franchises expired before the first dividend was declared. Now, when the time has come when the stockholders might reasonably expect some return to compensate them in part for their sacrifices in the past, the Railroad Commission comes along, closes its eyes to the past, and with a shrug of the shoulder says, in effect:

We are not interested in the past. Our jurisdiction has only recently adhered. We shall look only to the earnings of 1937 and 1938, and shall cut as deeply as we can without any regard to the deficiencies of the past and the contract relations between the board of supervisors and the Toll Bridge Company.

Thus, Mr. Coleman, financial expert of the Commission, in justifying his failure to give consideration to the sacrifices which the stockholders made in the past, testified as follows (Tr. 305):

"Of course, in this particular one, we had no voice in the matter until now, and that was the reason we were considering it from now on."

[fol. 66-46] And the presiding Commissioner indicated very clearly that he was not interested in whether or not the investor "had his reasonable dividends from the beginning until now". (Commissioner Riley, Tr. 304.)

The presiding Commissioner even asked for authorities on the fundamental proposition, heretofore always recognized by the Commission, that in fixing rates for a new pub-

lic utility the Commission will take into consideration the cost of developing the business, during a reasonable period of time. (Tr. 309-10.) These authorities were supplied to the Commission.

The difficulty with the point of view expressed by the presiding Commissioner and Mr. Coleman is that they have entirely overlooked the fact that the Commission, in stepping into the shoes of the board of supervisors of Contra Costa County in the matter of the tolls charged by both the Carquinez and the Antioch Bridges, took over the duty of regulation subject to the existing contract rights between the State of California and the Toll Bridge Company.

The representatives of the Commission have entirely overlooked the fact that one of those contract rights is that during the term of 20 years subsequent to the effective date of the franchise, the tolls set forth in the ordinance cannot be diminished by the public authorities unless they shall first have found that the return yielded by those tolls has become more than 15% of the values specified in Sections 2845 and 2846 of the Political Code.

Bearing in mind the existing contract rights of the Toll Bridge Company, the only way in which the existing tolls [fol. 66-47] could be reduced at this time would be by mutual consent.

Hence, we urge that further point that the Commission's Decision and Order herein impair the obligation of Petitioner's contract with the State of California and violate Petitioner's rights under Paragraph 1 of Section 10 of Article I of the Constitution of the United States and Section 16 of Article I of the Constitution of the State of California.

## VII

### False Analogy with Publicly Owned and Operated San Francisco Bay Bridges

From the start to the finish, this case was an effort to reduce the tolls charged for automobiles and passengers over the Carquinez Bridge down to the tolls charged by the two publicly owned and operated bridges across San Francisco Bay.

On the basis of an analogy which was and is patently false and misleading, the effort was made to reduce the tolls

from 60¢ per automobile plus 10¢ per passenger to the tolls effective on the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, namely; 50¢ per automobile and passengers, up to and including 5 passengers.

The plan was revealed in the very first sentence of the testimony of Mr. J. G. Hunter, the Commission's principal witness. Before American Toll Bridge Company had been [fol. 66-48] permitted to introduce a single word of testimony, Mr. Hunter, at the very outset of his testimony, revealed the purpose to cut the Carquinez Bridge toll down to the toll which was being charged by the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge. (Tr. 85.)

In Exhibit 19, submitted by Mr. Hunter, he again compared the tolls charged by the Carquinez Bridge with those charged by the two publicly owned and operated San Francisco Bay Bridges and then presented tabulations in which he applied the tolls of the two San Francisco Bay Bridges to the Carquinez Bridge. (Exh. 19, pp. 10-13.)

Continuing, Mr. Hunter's exhibit says (p. 14):

"The matter of a revised rate structure has been given consideration and a preliminary study indicated that it appeared possible to adopt, for the Carquinez Bridge traffic, the same rate structure, with respect to automobile and passenger fares, as that now in effect on the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, viz.:

50 cents for an automobile and passengers, up to and including five, with a rate of 5 cents for all other passengers, such rate structure to supersede the existing one of 60 cents per automobile plus 10 cents for each passenger."

The key figure of Mr. Hunter's said tabulations was a rate base of \$6,880,000.00 which figure he took from an exhibit prepared by an engineer loaned to the Railroad Commission for this purpose by the Department of Public Works. [fol. 66-49] \$6,880,000.00 was the figure on which Mr. Hunter computed his allowance for depreciation and also his rate of return. It was the key figure in his exhibit.

However, this figure and the exhibit in which it appears were thoroughly discredited on cross-examination of the witness, Mitchell. Without mentioning a host of other

errors and omissions, it developed that Mr. Mitchell had made a mistake against American Toll Bridge Company in the single item of "interest during construction" in the sum of \$415,542.00. (Tr. 241-2; Exh. 16, pp. 15, 19.)

Nevertheless, Mr. Hunter clung to his predetermined tolls.

Finally, in its Decision, when the Commission comes to the determination of the rates, it still has its eyes riveted on the tolls charged by the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge. Its computations are based entirely on those tolls (Decision, p. 8) and the rate finally fixed is stated by the Commission to be only "slightly higher than that proposed" (i.e., Mr. Hunter's proposal of the San Francisco Bay Bridge tolls).

The testimony in this case shows that this analogy on which the Commission's Decision is based, is entirely false and misleading.

On cross-examination, Mr. Hunter's analogy was badly shaken.

He conceded that he had taken the assumed investment figure of \$6,880,000.00 from Mr. Mitchell's report and had [fol. 66-50] made no independent investigation into the matter. (Tr. 329.)

He conceded that from the point of view of proper tolls there are important differences between the Carquinez Bridge, on the one hand, and the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, on the other hand. (Tr. 337.)

Thus, one very important difference arises from the fact that in the case of the Carquinez Bridge the investment must be amortized during the very short remaining life of the franchise, which now has only slightly more than 10 years to run, whereas no such situation exists as to the other two bridges. That means much more money required in the case of the Carquinez Bridge, for depreciation or amortization of the investment. (Tr. 337.)

Again, the cost of the money required for the construction of the Carquinez Bridge was much higher than that secured for the construction of the two publicly owned bridges. (Tr. 338.) Mr. Coleman, the Commission's own financial expert, reported that the cost of bond money for the Carquinez Bridge was 9.71% on the straight line basis and 8.60% on the sinking fund basis if capital stock necessarily issued to the financial houses which sold the bonds be disregarded.



(Exh. 1, p. 17.) On the other hand, the bond money used in the construction of the San Francisco-Oakland Bay Bridge, cost only about 4.5%. (Ready, Tr. 840.)

Mr. Hunter, accordingly, conceded that the funds secured from the Reconstruction Finance Corporation for the construction of the San Francisco-Oakland Bay Bridge were secured at very much lower rates of interest than the cost of money to American Toll Bridge Company. The same thing is true as to the bonds sold for the construction of the Golden Gate Bridge. The cost of money, accordingly, puts the Carquinez Bridge at a substantial disadvantage in comparison with the other two bridges. (Tr. 338.)

Furthermore, the San Francisco-Oakland Bay Bridge has the great advantage of a dense population immediately at either end of the bridge and of a great volume of traffic. Only 13 months and 2 days after the bridge was opened to traffic, the ten millionth automobile crossed the bridge. No such favorable conditions exist as to the Carquinez Bridge. (Tr. 338-9.)

On the very important item of taxes, none of which must be paid by the two publicly owned bridges, Mr. Hunter admitted that the Carquinez Bridge is at a distinct disadvantage. (Tr. 339.)

Finally, on this subject, the record shows the following question and answer (Tr. 340):

"Q. (by Mr. Thelen): But don't you believe that in fixing the rates for the Carquinez Bridge consideration should be given to the facts as they actually apply to that bridge instead of perhaps being led astray by making comparison with some other bridge as to which the circumstances are entirely different?

"A. (by Mr. Hunter): Oh, yes, I think the Carquinez Bridge should stand on its own feet regardless of what happens to the other two bridges."

In the closing testimony in the case, Mr. Lester S. Ready, witness for American Toll Bridge Company, submitted as the last exhibit in the case (Exh. 142) a statement of "Items of Cost of American Toll Bridge Company not Chargeable to Tolls under San Francisco-Oakland Bay Bridge Operations."

In this exhibit, Mr. Ready set forth some of the items of cost which are incurred by the Carquinez and the Antioch

bridges which are not chargeable to tolls in the case of the San Francisco-Oakland Bay Bridge. Thus—

Operating and maintenance expenses (Tr. 836; Exh. 142):

By arrangement between the California Toll Bridge Authority and the Reconstruction Finance Corporation, the Bay Bridge pays these expenses entirely out of gasoline taxes. The tolls do not pay any part of these expenses. The Carquinez and Antioch Bridges, on the other hand, must pay out of their tolls an average of \$171,331 per year for these items of expense.

Taxes (Tr. 837; Exh. 142):

(1) County—the Carquinez and Antioch Bridges pay an average of \$78,668 per year: the Bay Bridge nothing.

[fol. 66-53] (2) 2% on Gross Revenue—the Carquinez and Antioch Bridges pay an average of \$33,548. per year: the Bay Bridge nothing.

(3) State Franchise—Carquinez and Antioch Bridges, \$33,027; Bay Bridge nothing.

(4) Federal Income—Carquinez and Antioch Bridges, \$162,587; Bay Bridge, nothing.

The foregoing items are based on costs which would be incurred under present tolls.

Depreciation Annuity (Tr. 837; Exh. 142):

The maturity of the bonds sold to finance the Bay Bridge is 40 years while the money invested by American Toll Bridge Company necessarily must be retired before the expiration of the Company's toll bridge franchises in 1948. The excess cost to American Toll Bridge Company for this item averages \$142,771 per year.

Mr. Ready pointed out that if American Toll Bridge Company were relieved from paying out of its tolls costs which the San Francisco-Oakland Bay Bridge is not required to pay out of its tolls, the American Toll Bridge Company

would save an average of \$621,932 per year, or over the remaining 10 years of the franchises a total of \$6,219,320.

This saving would reduce the toll revenue required by the Company in the average sum of 36.9 per cent. Such a saving would make possible tolls even lower than those now charged by the Bay Bridge. (Tr. 837; Exh. 142.)

[fol. 66-54] The foregoing computations do not go into the further fact that the cost of money to the two publicly owned San Francisco Bay Bridges was far less than the cost of money to American Toll Bridge Company in connection with the construction of its two toll bridges. (Tr. 839-40.)

It thus appears that the Commission based its Decision on an analogy which cannot properly be applied. A decision based on such a false foundation is unfair and unjust and should not be permitted to stand.

## VIII

### Violation of Constitutional and Statutory Rights

American Toll Bridge Company specifically challenges the validity of the Commission's said Decision and Order on the ground that they violate the rights of said Company under the following provisions of the Constitution of the United States, the Constitution of California and the Statutes of California:

1. Section 1 of Article XIV of the Amendments to the Constitution of the United States;

2. Paragraph 1 of Section 10 of Article I of the Constitution of the United States;

3. Sections 13 and 14 of Article I of the Constitution of California;

4. Section 16 of Article I of the Constitution of California;

[fol. 66-55] 5. The Act of March 14, 1881 of the Laws of California (St. 1881; ch. 68, p. 76); and

6. Sections 2845 to 2848, inclusive, and Section 2872 of the Political Code of the State of California.

Wherefore, petitioner prays that a rehearing be granted and that thereupon said Decision and Order of February 8, 1938 be annulled and set aside.

Dated at San Francisco, California, this 17th day of February, 1938.

Dunn, White & Aiken, by B. R. Aiken and Bauer E. Kramer; Breed, Burpee & Robinson, by Harold C. Holmes, Jr.; Thelen & Marrin, by Max Thelen. Attorneys for American Toll Bridge Company.

(Here follows one page, Exhibit A, side folio 66-56)

	1938	1939
1. Operating Revenue.....	\$1,250,339	\$1,270,256
2. Total Direct & General Expenses.....	284,584	284,983
3. State Franchise & Federal Inc. Tax.....	114,548	45,129
4. Total.....	399,132	330,112
5. Net.....	851,207	940,144
6. Bond Interest.....	88,431	162,550
7. Bond Retirement.....	245,167	406,663
Total.....	333,598	569,213
8. Balance for Div. & Stock Retirements.....	517,609	370,931
9. Dividend @ 8% on Par Value of Stock less Refunds.....	302,150	284,913
10. Stock, Beginning of Year.....	3,776,873	3,561,414
11. Stock, Retired.....	215,459	86,018
12. Dividends @ 8% per annum for Period June 1, 1927 to Dec. 31, 1935 (without Interest on Same) Exh. 126.....		
13. Unretired Stock plus Unpaid Dividends as of End of Fran- chises.....		



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EXHIBIT A.

### Estimated Operating Results

American Toll Bridge Company—1938-1948

Under Rates as per CRC. Decision

[illegible]



[fol. 67]

## EXHIBIT "E" TO PETITION

Decision No. 30649

BEFORE THE RAILROAD COMMISSION OF THE STATE OF  
CALIFORNIA

Case No. 4259

In the Matter of the Investigation upon the Commission's Own Motion into the Rates, Charges, Contracts, Classifications, Rules and Regulations of AMERICAN TOLL BRIDGE COMPANY COVERING ITS OPERATION OF THE TOLL BRIDGE OVER THE CARQUINEZ STRAITS BETWEEN THE COUNTIES OF CONTRA COSTA AND SOLANO

## ORDER DENYING REHEARING

Petition for a rehearing of our Decision No. 30,612 in the above entitled matter having been filed by American Toll Bridge Company; the Commission having carefully considered the said petition and each and every allegation contained therein, and being of the opinion that no good cause for the granting of a rehearing is therein made to appear,

It is Ordered that the said petition for rehearing be and the same is hereby denied.

Dated, San Francisco, California, February 21, 1938.

Wallace L. Ware, Leon O. Whitsell, Frank R. Devlin, Ray C. Wakefield, Ray L. Riley, Commissioners.

● Certified as a True Copy. H. G. Mathewson, Secretary, Railroad Commission, State of California.

[fol. 68]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PETITION FOR WRIT OF REVIEW—Filed February 25, 1938

## Preliminary Statement

The Railroad Commission's order reduces petitioner's tolls for automobiles and passengers on foot or in vehicles over the Carquinez Bridge 31.7%.

The inevitable effect of this order, if it becomes effective, will be to force a similar reduction in the tolls for said services as to petitioner's Antioch Bridge, now operating in the red; yet the Railroad Commission closed its eyes to that situation and confined its attention to the only part of petitioner's single, unified transportation system which is being operated at a profit.

[fol. 69] The decision is based on the false analogy of the two publicly owned and operated bridges across San Francisco Bay and in total disregard of the fact that expenses amounting to an average of \$621,932.00 per year must be paid out of the tolls of the Carquinez Bridge, not one dollar of which is paid out of the tolls of the San Francisco-Oakland Bay Bridge.

The decision violates the Railroad Commission's own heretofore unbroken line of decisions (a) making allowances for the reasonable cost of developing the business of a new utility over a reasonable period of time and (b) fixing a rate of return somewhat in excess of the cost of money to the utility. The decision is a glaring departure from the Railroad Commission's policy of fair treatment to public utilities subject to the Railroad Commission's jurisdiction.

The Railroad Commission's order violates each provision of the Constitution of the United States and the Constitution and statutes of California referred to in the petition for rehearing filed by petitioner with the Railroad Commission (Exh. "D" attached to petition for writ of review). We invite particular attention to the following points and authorities.

### The Law

#### I.

The Commission's order confiscates petitioner's property [fol. 70] in the Carquinez Bridge and deprives petitioner of its property in said bridge without due process of law.

Section 1, Article XIV, Amendments to Constitution of United States.

Sections 13 and 14, Article I, Constitution of California.

Smyth v. Ames, 169 U. S. 466, 547.

San Diego Land & Town Co. v. National City, 174 U. S. 739, 757.

- Wilcox v. Consolidated Gas Co., 212 U. S. 19, 41.  
 Minnesota Rate Cases, 230 U. S. 352, 434.  
 Des Moines Gas Co. v. Des Moines, 238 U. S. 153,  
 165.  
 Denver v. Denver Union Water Co., 246 U. S. 178,  
 191.  
 Southwestern Bell Telephone Co. v. Public Service  
 Commission, 262 U. S. 276, 287.  
 Georgia Railway & Power Co. v. Railroad Commis-  
 sion, 262 U. S. 625, 631.  
 Bluefield Water Works Co. v. Public Service Com-  
 mission, 262 U. S. 679, 690, 692.  
 Board of Commissioners v. New York Telephone  
 Co., 271 U. S. 23, 31.  
 McCardle v. Indianapolis Water Co., 272 U. S. 400,  
 410.  
 Los Angeles Gas & Electric Corporation v. Railroad  
 Commission of California, 289 U. S. 287, 305.  
 Southwestern Bell Telephone Co. v. Port Smith, 294  
 Fed. 102.  
 Southern Bell Telephone Co. v. Railroad Commis-  
 sion, 5 Fed. (2d) 77, 87.  
 Consolidated Gas Co. v. Prendergast, 6 Fed. (2d)  
 243.  
 [fol. 71] New York & Richmond Gas Co. v. Prender-  
 gast, 10 Fed. (2d) 167, 178.  
 Brooklyn Borough Gas Co. v. Prendergast, 16 Fed.  
 (2d) 615, 638.

## II

The Commission's order confiscates petitioner's property in the Carquinez and the Antioch Bridges and deprives petitioner of its property in said two bridges without due process of law.

See authorities cited under I—also .

Coney v. Broad River Power Co., 171 So. Car. 377,  
 172 S. E. 437, and cases there cited.

## III

The Commission's order, even though it were in form within the limits of the power delegated to the Commission, nevertheless violates petitioner's rights under Section 1 of Article XIV of the Amendments to the Constitution



of the United States, because it is arbitrary, unjust and unreasonable.

Interstate Commerce Commission v. Union Pacific Railroad Company, 222 U. S. 541, 547.

State of Washington v. Fairchild, 224 U. S. 510, 524.

Great Northern Railway Company v. State of Minnesota, 238 U. S. 340, 345.

Northern Pacific Railway Company v. Department of Public Works of Washington, 268 U. S. 39, 45.

[fol. 72] The arbitrariness of the order is shown by the fact that the Commission violated unbroken lines of its own prior decisions by

(1) Selecting the more profitable portion of a single, unified transportation system and fixing rates for that portion of the system in disregard of the less profitable portion of the system;

(2) Refusing to make any allowance whatever for the reasonable cost, during a reasonable period of time, of developing the business of a new utility (going concern value); and

(3) Cutting the rate of return far below even the cost of money to the utility.

(See decisions of Railroad Commission of California cited in Petition for Rehearing).

#### IV.

The Commission's order impairs the obligation of petitioner's contract with the State of California that the rates set forth in the ordinance of the Board of Supervisors of Contra Costa County granting the franchise for the construction and operation of the Carquinez Bridge shall not be reduced by the public authorities for 20 years unless the public authorities shall have found that the receipts from tolls in any one year have yielded more than 15% on the cost of construction or erection of the toll bridge or the fair cash value thereof, together with the reasonable cost of all [fol. 73] necessary repairs and maintenance of the toll bridge. The yield has never been and is not now anywhere near as high as 15%.

1. For the contract, see

Political Code, sec. 2845, 2846, 2872.

Laws of California, Act of March 14, 1881 (St. 1881, ch. 68, p. 76).

2. A franchise creates a vested right by contract.

Russell v. Sebastian, 233 U. S. 195.

Oro Electric Corporation v. Railroad Commission of California, 169 Cal. 466.

Postal Telegraph-Cable Company v. Railroad Commission of California, 200 Cal. 463.

3. The State may delegate to a subordinate political subdivision, such as a city or a county, the right not merely to regulate the rates of a public utility but also to enter into a contract with such utility on the subject of rates. Such contract, when entered into, can not be impaired without violation of State and Federal Constitutional provisions.

Section 10, Article I, Constitution of the United States.

Section 16, Article I, Constitution of California.

Detroit v. Detroit Citizens' Street Railway Company, 184 U. S. 368, 382.

Vicksburg v. Vicksburg Waterworks Company, 206 U. S. 496, 508.

[fol. 74] Railroad Commission of California v. Los Angeles Railway Corporation, 280 U. S. 145, 151-2.

4. The State of California delegated to the Board of Supervisors of Contra Costa County the right to enter into said contract and the Board of Supervisors exercised the delegated authority when it adopted the ordinance granting the Carquinez Bridge franchise and setting forth therein the tolls to be charged by the grantee of the franchise.

See authorities under (1) and Ordinance No. 171 of Board of Supervisors of Contra Costa County (appendix to Exh. 19 herein).

It is respectfully submitted that the Writ of Review should issue.

Dated at San Francisco, California, this 25th day of February, 1938.

Thelen & Marrin, by Max Thelen, Dunn, White & Aiken, by B. R. Aiken, and Bauer E. Kramer, Breed, Burpee & Robinson, by Harold C. Holmes, Jr., Attorneys for Petitioner.

[fol. 75] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

AFFIDAVIT FOR TEMPORARY STAY AND FOR SUSPENSION OF  
DECISIONS AND ORDERS OF RAILROAD COMMISSION DURING  
PENDENCY OF WRIT OF REVIEW—Filed February 25, 1938

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

Will F. Morrish, being first duly sworn, deposes and says:

That he is the President of American Toll Bridge Company, a corporation, the petitioner in the above entitled proceedings; that said corporation has for a number of years been engaged and is now engaged in the ownership and operation of a toll bridge known as the Carquinez Bridge, across the Carquinez Straits, between Crockett in [Tol. 76] Contra Costa County and Valona in Solano County, and of a toll bridge known as the Antioch Bridge, across the San Joaquin River near Antioch, between the Counties of Contra Costa and Sacramento; that each of said bridges was constructed and is being operated under a franchise granted by ordinance of the Board of Supervisors of the County of Contra Costa; that the Carquinez Bridge franchise was granted by ordinance of February 5, 1923, which will expire on or about March 5, 1948, and that the Antioch Bridge franchise was granted by ordinance of June 4, 1923, which will expire on or about July 4, 1948.

That among the tolls heretofore charged by said American Toll Bridge Company for transportation over each of said toll bridges, under authority of said ordinances, have been and now are the following:

Passengers (7 years of age and older) on foot or in vehicles	\$ .10
Auto only	.60

That in its order and decision of February 8, 1938, referred to in the petition for writ of review on file herein, the Railroad Commission reduced said tolls, effective March 1, 1938, so as to read:

Passengers (7 years of age and older) on foot or in vehicles	\$ .05
Auto only	.45

That said order, if it becomes effective, will reduce the revenues of American Toll Bridge Company from said service [fol. 77] to the extent of 31.7%.

That on February 17, 1938 American Toll Bridge Company filed with the Railroad Commission its petition for rehearing on said decision and order and that on February 21, 1938 the Railroad Commission made and filed its order denying said petition for rehearing.

That under said decisions and orders, unless a temporary stay is granted by this Court, as provided by Section 68 of the Public Utilities Act, as amended (St. 1933, ch. 442, p. 1157), immediate and irreparable injury, loss and damage will result to said American Toll Bridge Company before notice can be served and hearing had on motion for stay and suspension of the Railroad Commission's said decisions and orders, for the following reasons:

If said decisions and orders are permitted to become effective pending the hearing and decision on said Company's motion for a suspension of said decisions and orders upon notice and after hearing, said American Toll Bridge Company will be required to charge immediately, beginning on March 1, 1938, the reduced tolls set forth in the Railroad Commission's said decisions and orders; that the amount in which the revenues from said reduced tolls will be below the revenues from the tolls heretofore and now in effect for said services will be an average of at least \$650.00 per day; [fol. 78] that in the event this Court shall finally enter judgment setting aside the Railroad Commission's said decisions and orders, said American Toll Bridge Company will have no means of collecting the amount of said reduction, or any portion thereof, from the persons who, in the meantime, would have paid said reduced tolls; and that said sums of money, averaging \$650.00 per day, and all thereof, will be irretrievably lost to said American Toll Bridge Company unless this Court grants a temporary stay restraining the operation of the Railroad Commission's said decisions and orders until hearing and determination of said application for stay and suspension upon notice, as aforesaid; and that the damage to said American Toll Bridge Company will otherwise be immediate and irreparable.

That under said decisions and orders, unless the same are stayed and suspended upon notice, as provided by said Section 68 of the Public Utilities Act, as amended, during the

pendency of writ of review before this Court, great and irreparable damage will otherwise result to said American Toll Bridge Company, for the following reasons:

That an average of at least \$750.00 per day of revenue will be lost to said American Toll Bridge Company on each [fol. 79] and every day during the pendency of said writ of review before this Court and that in the event that this Court should thereafter make and enter its judgment setting aside said decisions and orders of the Railroad Commission, said American Toll Bridge Company would have no means of recovering said money or any thereof from any corporations or persons which in the meantime had paid said reduced tolls, and said sums averaging \$750.00 per day, and all thereof, would have been irretrievably lost to said American Toll Bridge Company; and that the damage to said American Toll Bridge Company would be great and irreparable.

That should this Court not grant said temporary stay and also said stay or suspension after notice and hearing, and should the Court thereafter enter judgment setting aside said decisions and orders of the Railroad Commission, said American Toll Bridge Company would have no remedy whereby it could recover the losses which it had sustained through said erroneous and unlawful decisions and orders of the Railroad Commission, and that the only adequate remedy is (a) an order of this Court granting a temporary stay restraining the operation of said decisions and orders to the time of hearing and determination of said motion upon notice, as aforesaid, followed by (b) an order staying and suspending the operation of said decisions and orders [fol. 80] during the pendency of said writ of review before this Court, all as provided in said Section 68 of the Public Utilities Act, as amended.

Will F. Morrish.

Subscribed and sworn to before me this 24th day of February, 1938. Lulu P. Loveland; Notary Public in and for the City and County of San Francisco, State of California. (Notarial Seal.)

[fol. 81] Received copy of attached documents this 25th day of February, 1938.

Ira H. Rowell, Attorney for Respondents.



[fols. 82-85] (Order of Supreme Court of California granting temporary stay of decisions and orders of Railroad Commission, filed on February 25, 1938, omitted in printing.)

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[fols. 86-88] (Suspending bond on temporary stay, approved by the Supreme Court of California and filed on February 25, 1938, omitted in printing.)

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[fols. 89-90] (Order to show cause why operation of decisions and orders of Railroad Commission should not be stayed or suspended during pendency of writ of review, filed February 25, 1938, omitted in printing.)

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[fols. 91-93] (Notice of application for stay and suspension of decisions and orders of Railroad Commission, filed February 25, 1938, omitted in printing.)

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[fols. 94-95] (Affidavit of service of copies of petition for writ of review and other specified documents, filed on February 28, 1938, omitted in printing.)

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[fols. 96-98] (Order of Supreme Court of California resetting hearing on order to show cause and extending order granting temporary stay of decisions and orders of Railroad Commission, filed on March 2, 1938, omitted in printing.)

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[fol. 99] [File endorsement omitted]

[fol. 100]. IN SUPREME COURT OF CALIFORNIA

[Title omitted]

ANSWER OF RAILROAD COMMISSION TO PETITION FOR WRIT OF REVIEW—Filed March 12, 1938

The petition here presented is one requesting the Court to issue a writ of review to consider the validity of a rate-fixing order issued by the Commission on February 8, 1938.

covering the rates or tolls charged patrons of the Carquinez toll bridge.

Upon the filing of the petition, the Court made an order temporarily staying the enforcement of the rate order in question, as permitted by Section 68 of the Public Utilities Act.

[fol. 101] As contemplated by the Rules of Court, the respondent Commission respectfully presents its answer to said petition.

It seems unnecessary here to make an extended factual statement to supplement the material contained in the petition, inasmuch as the issues presented resolve themselves largely into questions of law alone. We shall endeavor first of all to state briefly what we conceive to be the grounds upon which the petitioner challenges the Commission's order, and thereafter shall set forth the facts of record to the extent necessary in order that the exact points of controversy may be made entirely clear.

#### General Issues Presented

It plainly appears from the petition that the validity of the Commission's action is challenged upon two quite distinct legal grounds, both founded upon a claimed invasion of rights guaranteed by state and federal constitutions.

#### Confiscation:

The first general ground of attack is that the rate order will result in a taking of petitioner's property "without due process of law." In other words, it is claimed that the rates fixed are so low as to result in confiscation. This claim is premised upon factual allegations to the effect that the rates prescribed permit of a net return of but 6.6 per cent upon the fair value of the bridge property, less than what is alleged to be a fair rate of return.

[fol. 102] As a further claimed denial of due process, the petitioner seems to allege also that the Commission's action in fixing rates for the Carquinez bridge alone, refusing to treat that bridge and petitioner's Antioch bridge as a single rate making unit, was arbitrary and capricious action.

We shall presently analyze these contentions in the light of both the facts of record and rate making precedent established in similar cases. We shall show that the claim of confiscation is without substantial foundation.

### Impairment of Contract:

The second ground of attack is quite distinct from the first. It is a challenge to the jurisdiction of the Commission to regulate bridge rates or tolls except to the limited extent heretofore permitted to the Supervisors of the County which granted the bridge franchise. That franchise, it is argued, constitutes a contract between the petitioner and the public. Asserting first that certain Political Code provisions and general laws in force at the time the petitioner received its franchise from the County of Contra Costa must be read into the franchise itself, and be taken to have limited the power formerly vested in the Supervisors of that County to fix bridge tolls or rates, it is next contended that such franchise contract has been impaired in violation of Constitutional guarantees because the Railroad Commission has refused to recognize any limitations upon [fol. 103] its rate-fixing authority.

The respondent Commission acknowledges that this issue is an important one. But it should here be pointed out that this was not a question either discussed in the proceeding before the Commission or decided by it. The Commission properly proceeded to fix petitioner's bridge tolls in accordance with the duty imposed upon it by the legislative act of 1937 amending Section 2(dd) of the Public Utilities Act so as to include toll bridges as public utilities and to make them subject to rate regulation by this Commission. And in the performance of that duty, the Commission was guided in its action by the test applicable in all utility rate-fixing proceedings, the only guiding principle specified in the Public Utilities Act,—namely, that the rates charged shall be "just and reasonable." (Section 13.)

In presenting this answer to the petition, counsel for the respondent consider it their duty to dispute the contention thus advanced by the petitioner. However, because of the limited time permitted for an examination into the authorities applicable to this question, we shall not endeavor here to do more than point to the particular problem involved.

### The Question of Confiscation

Although the petition charges that the effect of the Commission's order is to deprive the bridge company of its property, it contains no allegations of fact to support such

[fol. 104] a conclusion. For any statement informing us of the factual errors alleged to have been committed, we must turn to the Exhibit "D" attached to the petition, which is the application filed with the Commission for a rehearing of the rate order. Here it seems to be the contention that, when looking at the result of operations on the Carquinez bridge alone, the minimum value to be accorded the bridge property is \$8,632,622 (Page 20); that upon this value or rate base the Company is entitled to an annual return of "somewhat in excess of 9 per cent" (Page 29). This would be equivalent to a net revenue of at least \$776,936 annually.

In comparison to these claims, it appears that the petitioner estimates the net revenue which it will obtain under the rates prescribed by the Commission to be only \$570,298 (Table, Page 24), a rate of return on a rate base of \$8,632,622 of but 6.6 per cent. Hence, the claim of confiscation.

The Commission in its decision said in effect that it was allowing a rate of return of approximately  $7\frac{1}{2}$  per cent on the investment in the bridge, and that the rates fixed estimated to yield such a return were considered reasonable.

Concisely stated, the points to be discussed as briefly as possible are these:

**Net Revenue.**—The petitioner implies that the Commission has been arbitrary in its estimate of revenues and ex-[fol. 105] penses under the rates prescribed. This is far from the true fact. It may easily be demonstrated that the Commission accepted the judgment expressed by petitioner's own witness, corrected only for an error in respect to federal taxes, an error which the Commission deemed to be an obvious one.

**Rate of Return.**—The Commission differs materially from the petitioner as to what constitutes a reasonable rate of return. We shall show that a return of 7.5 per cent, is more than ample when tested by the standards usually applied by commissions and courts alike.

**Property Value.**—The minor difference that may exist as to the proper rate base to be accepted arises mainly out of the petitioner's demand for the capitalization of early operating losses, a claim which may not legally be recognized.

## Operating Revenue

The revenues to be obtained under any rate schedule are necessarily conjectural. All witnesses agreed, however, that a reduction in existing tolls would result in a stimulation of traffic. The Commission's witness first proposed a flat fare of 50 cents per car without extra charge for passengers not exceeding five in number. All estimates of increased traffic were based upon this suggested rate. But the Commission's final conclusion was that a somewhat higher rate would be advisable, and therefore prescribed a schedule of 45 cents per car and 5 cents per passenger, an average of about 56 cents for car and passengers.

To obtain a comparison of the anticipated results under these two rate structures, let us look at the estimates presented by the petitioner itself. They appear in the table following, a table prepared from Exhibit "D" attached to the petition, and from Exhibit 134 introduced before the Commission by petitioner's witness, Mr. Ready.

[col 107]

## EXHIBIT "D" TO PETITION

## Carquinez Bridge

## American Toll Bridge Company

## Exhibit 124. Company's Witness Ready.

## Actual Revenues and Expenses 1937.

## Estimated Revenue and Expenses 1938-1943, at Flat 50 Cent Rate

	Commission Rates Year		Old Rates 1937		1938	1939	1940	1941	1942	1943
Operating Revenues:										
Tolls.....	\$1,135,277	\$1,544,691	\$1,080,036	\$1,078,634	\$1,097,230	\$1,117,687	\$1,140,004	\$1,160,461		
Rents and Miscellaneous.....	8,243	8,242	8,243	8,243	8,243	8,243	8,243	8,243	8,243	8,243
Total Revenue.....	1,143,520	1,522,934	1,068,279	1,086,877	1,105,473	1,125,930	1,148,247	1,168,704		
Operating Expenses:										
Operation and Maintenance.....	146,700	135,084	146,700	146,700	146,700	146,700	146,700	146,700	146,700	146,700
Gross Revenue Tax (2%).....	22,706	31,114	21,201	21,573	21,945	22,354	22,800	23,209	23,600	23,999
General Expense.....	63,852	149,970	63,852	63,991	64,365	64,434	64,575	64,621	64,671	64,721
Total Direct & General Expense.....	233,258	316,168	231,753	232,264	233,010	233,488	234,075	234,605	235,136	235,666
Amortization of Investment.....	206,727	206,727	206,727	206,727	206,727	206,727	206,727	206,727	206,727	206,727
Total Expenses (ex. Income Tax).....	439,985	522,895	438,480	438,991	439,737	440,215	440,802	441,332	441,863	442,393
Net Income Before Income Taxes.....	703,535	1,000,039	629,799	647,886	665,736	685,715	707,445	728,282	748,114	768,011
Federal Income Tax.....	108,511	66,223	108,511	45,073	40,779	50,427	54,899	59,371	63,843	68,315
State Franchise Tax.....	24,726	.....	24,726	9,236	9,821	11,858	13,402	15,951	18,500	21,049
Total Income Taxes.....	133,237	66,223	133,237	54,309	50,600	62,285	68,301	75,322	82,343	89,364
Total All Expenses.....	573,222	589,118	571,717	493,300	490,337	502,500	509,103	516,707	523,746	530,757
Net Revenue.....	570,298	933,816	496,562	593,577	615,136	623,430	639,144	652,857	664,371	674,257
Rate Base.....	8,632,622	7,949,537	7,949,537	7,949,537	7,949,537	7,949,537	7,949,537	7,949,537	7,949,537	7,949,537
Rate of Return.....	6.6%	12.12%	6.25%	7.47%	7.74%	7.84%	8.04%	8.21%	8.36%	8.51%



[fol. 108] It requires only a brief analysis of the figures in the preceding table to throw light upon the single difference existing between the Company and the Commission as to the net revenue to be expected. It lies in the item of income taxes.

Let it first be noted that the results shown for the 1937 year are actual, at rates actually charged. The revenues shown for 1938 and succeeding years, as estimated by Mr. Ready for the Company, were at the flat 50 cent rate, whereas the 1938 revenue appearing in the first column is the Company's estimate at the higher rates prescribed by the Commission.

Turning to the item of income taxes included as an operating expense, it will be seen that the amount included for 1938 in both columns 1 and 3 is \$133,237, yet the net income shown before inclusion of such taxes is \$703,535 when computed at the rates ordered by the Commission, and \$629,799 when computed at a flat fifty cent rate. And it will be seen that for the year 1937, when the net income before revenue taxes reached the sum of \$1,030,039, the petitioner has included a tax of only \$66,223.

The explanation of this is obvious. The petitioner seeks to allocate its federal income tax upon the earnings of the 1937 year to its expenses charged against the 1938 year. Such an accounting for taxes is contrary to the uniform system of accounts prescribed for all other classes of utility [fol. 109] ties, and lacks foundation in law and principle.

For example, in the case of *Fawcett Machine Co. v. U. S.*, 282 U. S. 375, the Supreme Court quotes from the Treasury Regulations as follows:

"Federal income \* \* \* taxes are deemed to have been paid out of the net income of the taxable year for which they are levied."

And the Court further stated in reference to the point raised by the appellant in the case:

"Petitioner asserts that article 845 was based on the erroneous assumption that income taxes are payable out of the net income of the taxable year for which they are levied.

"The United States replies that it is, and since 1914 it has been, required that a taxpayer shall keep his books and make his returns on a basis which will reflect true income;

that while the taxes for any year are not payable until the following year, good accounting practice requires an accrual of them as a liability of the current year's business; and that the regulation in question was not only reasonable, but necessary for proper administration of the revenue act.

"The position of the government is sound. A corporation cannot claim to have accumulated any net income in any year until provision is made for taxes accrued, based on net income for the same year."

The true federal income tax to be included for the year 1938 in the first column of the above table will not exceed \$56,000. Thus the total state and federal net revenue tax, including the extraordinarily high state franchise tax of \$24,726 for this particular year, will be fully \$52,500 below the amount stated, and the net income for return upon [fol. 110] capital correspondingly increased to at least \$622,798.

We need not here attempt to demonstrate the accuracy of this computation, for a reference to the petitioner's own estimates of this item of expense for succeeding years, as they appear in the table above, demonstrate the sufficiency of the allowance.

#### Rate of Return

In the petition it is alleged (Page 5) that the Commission fixed a rate of return far below the cost of money. In Exhibit "D" attached (Page 26) it is stated that both Mr. Ready, testifying for the petitioner, and Mr. Coleman, for the Commission, had computed the cost of that portion of the Company's total capital obtained through the issue of bonds at 9.71 per cent.

The meaning of this term, "cost of money", and the use to which applied by the Commission in determining what may reasonably be taken as a fair rate of return upon a utility property, requires brief explanation.

In the financing of both its bridges, the American Toll Bridge Company in 1925 issued \$6,500,000 twenty year bonds. Of these, \$4,500,000 were 7 per cent first mortgage bonds, and \$2,000,000 were 8 per cent second mortgage bonds. It sold these bonds at a discount of \$650,000 and recorded on its books a selling expense of \$23,853. In addition, it delivered a stock bonus of \$800,000 to the syndicates which sold these bonds. Altogether, the discount and ex-

[fol. 111] penses included by the witnesses as being related to those bonds totaled \$1,590,492, and it was the amortization of this latter sum over a period of twenty years, plus the annual interest on those bonds, which they testified would result in an effective interest rate of 9.71 per cent.

The Commission cannot agree that any such interest rate then represented or now represents, the cost of bond money to the petitioner. By 1935 the Company had reduced its bonded debt to \$4,180,500, and in that year it redeemed the full amount by paying a premium of \$131,300. It then issued \$4,300,000 of 5½ per cent bonds due serially from 1936 to 1945. Of the latter, there presently are outstanding \$3,600,000.

Thus, it is the annual carrying cost of these bonds, not the original issue, that may properly be considered in determining what may be taken as a fair rate of return today. If a public utility can enjoy a rate of return upon its entire capital fully equal to the cost of that portion bearing fixed interest obligations, it will have a return adequate "to maintain and support its credit", as was said in the leading case of *Bluefield Waterworks Co. v. Public Service Comm.*, 262 U. S. 679, 692, "and enable it to raise the money necessary for the proper discharge of its public duties."

The evidence clearly shows that the petitioner's annual fixed charges on its outstanding bonds, including both the interest charge and the straight line amortization of the [fol. 112] discount and selling expense incurred, result in an annual effective interest rate of but 6.35 per cent.

The Commission believes that the "cost of money", when so computed, bears a real significance to the rate of return which should be allowed upon total capital. And when in other utility rate cases the Commission has applied the "cost of money" test, it has made its computation upon this basis, not upon the cost of bonds no longer outstanding, as the petitioner seemingly would contend.

But the petitioner would probably contend further that because the old bonds were retired before maturity it has not been fully reimbursed for the premiums then paid, or for the full amortization of the discount and expense incurred. By the same process which it employs to compute an annual cost on the old bonds of 9.71 per cent, including the amortization of bonus stock, it might claim a total of \$571,821 of such unrecouped charges. In fact, the actual amount withdrawn by the Company from its treasury in the

redemption of its old bonds was but \$205,827. The most that can equitably be claimed is the right to restore this sum to the treasury by amortizing it over the life of the new bond issue. Even then, the cost of the petitioner's bond money remains less than 7 per cent.

[fol. 113] The Commission does not concede, therefore, and certainly the petitioner has not demonstrated, that the rate of return which it will obtain on its entire invested capital is less than a fair rate of return, or so low as to result in confiscation. We need not refer to the rates of return commonly approved for utilities of other classes. It should be noticed, however, that in *Clark's Ferry Bridge Co. v. Penn. P. S. Comm.* (1934) 291 U. S. 227, the Supreme Court held that a 7 per cent return upon a toll bridge property was not confiscatory.

[fol. 114]

#### Property Value

The petitioner fails anywhere to make an averment as to the fair value of its Carquinez bridge property for rate fixing purposes. In its petition for rehearing (Exhibit "D") it uses the figure of \$8,632,622 as a rate base.

But a reference again to the table heretofore set forth showing Mr. Ready's estimates of net return, and to the Commission's decision where the various estimates of cost are presented (Exhibit "C", page 10), it will be seen that the total investment in the bridge structure, lands and fixtures, was \$7,949,954. That is exactly the figure which the Commission considered as the base upon which to test the reasonableness of the rates prescribed, although expressing the opinion that certain book costs totaling approximately \$375,000 could rightfully be questioned.

The petitioner's net revenue for the first year under the rates prescribed being not less than \$622,798, as heretofore shown under the heading of "Operating Revenue," it may be seen that the Commission provided for a rate of return of 7.8 per cent upon the full investment in the bridge property.

It is true that the petitioner placed in evidence an estimate of the cost to reproduce the Carquinez bridge property today. But it has at no time urged that this estimate represents the value of the property to be accepted as a rate base. [fol. 115] It is true also that it contends for the inclusion of a specific additional sum of \$382,668 to reflect "interest during construction." This, however, is a claimed capital

allowance for interest not actually paid out during the course of construction, it being a hypothetical interest charge on capital obtained from sources other than bond money, and which did not actually carry a fixed interest charge during the construction period. Whatever merit there may be to the inclusion in the rate base of an assumed interest charge during construction, not actually paid, the petitioner cannot justly claim any fundamental error in the rate base actually adopted by the Commission, for in any event the Commission would have been justified, as it indicated, in reducing the book costs in an amount in excess of the additional interest claimed.

And the petitioner asserts the right to include in the capital base a further sum of \$300,000 for "cost of developing the business", or what it denominates a "going concern" value. In answer to this claim, it need be said merely that going concern value, whatever place it properly may have in the valuation of some public utility properties, cannot be measured by the losses incurred during the development stages of the business. As the Supreme Court of the United States said in *Los Angeles Gas & Elec. Corp. v. Railroad Commission*, 287 U. S. 289, 313:

[fol. 116] "Nor does this recognition of going value countenance a mere attempt to recoup past losses. \* \* \* Deficits in the past do not afford a legal basis for invalidating rates, otherwise compensatory, any more than past profits can be used to sustain confiscatory rates for the future."

### The Rate Making Unit

The petitioner asserts that the Commission should have considered the two bridges which it owns and operates, the one at Antioch and the one at Carquinez, as a single rate making unit.

Let it be conceded that the bridge which the petitioner owns and operates at Antioch is earning a considerably lower rate of return than the bridge at Carquinez. Nevertheless, the Commission was not violating any constitutional right when it inquired into the reasonableness of the Carquinez bridge alone.

For example, in the case of *Wabash Valley Electric Co. v. Young*, 287 U. S. 488; it was determined that a state commission may fix the rates of an electric utility for each of



the municipal areas served. In *Gilchrist v. Interborough Rapid Transit Co.*, 279 U. S. 159, where a company was operating both an elevated and a subway transportation system, it was held that the two systems could be considered as separate rate making units.

The respondent Commission has always exercised a discretion as to what in each case should be taken as the rate making unit. In telephone cases it has frequently used the [fol. 117] metropolitan exchange areas as the rate unit. For gas and electric companies, because of the interrelation of facilities and service, it has usually considered the entire service area, but has always separated one type of service from the other. In the regulation of water companies serving more than one municipal area, it has treated the respective systems as distinct rate fixing units. And it has always considered the passenger commutation services across the San Francisco Bay by electric lines and ferries as services separate from the other railway operations conducted by the same companies.

Therefore, the Commission's action in the instant case did not constitute either an abuse of discretion or a reversal of any rate making precedent.

#### Conclusion as to Confiscation

In concluding this reply to the petitioner's claim of confiscation resulting from the Commission's rate order, it is submitted that no substantial grounds have been advanced in support of the claim, and that upon this point the Court should deny the writ of review requested.

#### [fol. 118] Impairment of Contract

Apparently the petitioner concedes the jurisdiction of the Railroad Commission to institute an investigation into the reasonableness of the bridge tolls, and to prescribe other rates. In other words, it concedes that a toll bridge is a public utility and that the Legislature could at any time divest the county supervisors of whatever power they may have had to fix tolls by transferring such power to the Railroad Commission.

The crux of petitioner's argument, as it appears to us, is that the county supervisors possessed only a limited power to fix bridge tolls and therefore the power now vested in the Commission is similarly limited.



The legislative act of 1937 (Chap. 896) which conferred jurisdiction upon the Commission, reads as follows, the underscored words being the additions then made to subsection (dd) of Section 2 of the Public Utilities Act, and subsection (ee) being new.

"(dd) The term 'public utility,' when used in this act, includes every common carrier, toll-bridge corporation, pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

"(ee) The term 'toll-bridge corporation,' when used in this act, includes every private corporation or private person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing any bridge or appurtenance thereto, used for the [fol. 119] transportation of persons or property for compensation in this State."

We shall quote also from the two Political Code sections upon which the petitioner rests the contention that the franchise granted in 1923 by the Supervisors of Contra Costa County should be construed as a contract exempting the petitioner for a period of twenty years from any downward revision of its rates by the Supervisors, and now by the Commission, unless it be shown that the rate of the return from the bridge has exceeded 15 per cent. The provisions quoted at page 42 of Exhibit "D" are these:

Sec. 2845. "The board of supervisors granting authority to construct a toll-bridge or to keep a public ferry, must at the same time:

"3. Fix the rate of tolls which may be collected for crossing the bridge or ferry which may raise annually an income not exceeding fifteen per cent on the actual cost of the construction or erection of the bridge or ferry, and such additional income as will provide for the annual cost of operation, maintenance, amortization and taxes of the bridge or ferry."

Sec. 2846. "*License tax and rate of tolls, how fixed.*—The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished dur-

ing the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected."

The petitioner asserts in its memorandum of authorities, page 6, that (1) a "franchise creates a vested right by contract;" (2) that the state may delegate to the county the [fol. 120] right to "enter into a contract" with a "public utility", on the subject of rates; and (3) that the state did delegate to the Supervisors of Contra Costa County the power to contract in respect to toll bridge rates.

The respondent doubts that any of these propositions are sustainable under the laws of this State. It concedes, of course, that in some states there may be such a thing as a franchise contract covering the matter of public utility rates, one binding upon the utility and the public alike, and one which is not subject to impairment without invasion of constitutional guarantees. There are many decisions so holding, but we believe there are none arising under the constitution and laws of this State.

The first question to be determined in each case is whether the state law permits the subordinate state body to bind itself by contract, and the second question is whether the franchise granted was actually intended to be, and can be construed to be, a mutually binding contract.

One of the most recent decisions of the Supreme Court of the United States upon this question, and one arising under the California laws, is that of *Railroad Commission v. Los Angeles Railway Corp.*, 280 U. S. 145. In recognition of the right of a state to empower its subordinate governmental authorities to enter into rate contracts with public utilities, the Court said:

[fol. 121] "It is possible for a state to authorize a municipal corporation by agreement to establish public service rates, and thereby to suspend for a term of years not grossly excessive the exertion of governmental power by legislative action to fix just compensation to be paid for service fur-

nished by public utilities. *Detroit v. Detroit Citizens' Street R. Co.*, 184 U. S. 368, 382, 46 L. ed. 592, 605; *Vicksburg v. Vicksburg Waterworks Co.*, 206 U. S. 496, 508, 515, 51 L. ed. 1155, 1160, 1163; *St. Cloud Pub. Serv. Co. v. St. Cloud*, 265 U. S. 352, 355, 68 L. ed. 1050, 1053. And where a city, empowered by the state so to do, makes a contract with a public utility fixing the amounts to be paid for its service, the latter may not be required to serve for less even if the specified rates are unreasonably high. *Detroit v. Detroit Citizens' Street R. Co.* supra, (184 U. S. 389, 46 L. ed. 608). And, in such case, the courts may not relieve the utility from its obligation to serve at the agreed rates however inadequate they may prove to be. *St. Cloud Pub. Serv. Co. v. St. Cloud*, supra.

However, the Supreme Court then proceeded to point out that any such power claimed to have been delegated to a political subdivision to surrender by contract its continuing authority to regulate rates is a power which must be expressly conferred, and never to be implied. We quote further from this decision as follows:

"This court is bound by the decisions of the highest courts of the states as to the powers of their municipalities. *Georgia R. & Power Co. v. Decatur*, 262 U. S. 432, 438, 67 L. ed. 1065, 1073. Our attention has not been called to any California decision, and we think there is none, which decides that the state legislature has empowered Los Angeles to establish rates by contract. This court is therefore required to construe the state laws on which appellants rely. As it is in the public interest that all doubts be resolved in favor of the right of the state from time to time to prescribe rates, a grant of authority to surrender the power is not to be inferred in the absence of a plain expression of purpose to that end. The delegation of authority to give up or suspend the power of rate regulation will not be found more readily than would an intention on the part of the state to authorize [fol. 122] the bargaining away of its power to tax. *Providence Bank v. Billings*, 4 Pet. 514, 561, 7 L. ed. 939, 955; *Railroad Commission Cases*, 116 U. S. 307, 325, 29 L. ed. 636, 642, 6 Sup. Ct. Rep. 334, 388, 1191; *Freeport Water Co. v. Freeport*, 180 U. S. 587, 599, 45 L. ed. 679, 688, 21 Sup. Ct. Rep. 493; *Stanislaus County v. San Joaquin & K. River Canal & Irrig. Co.*, 192 U. S. 201, 210, 48 L. ed. 406, 411, 24

Sup. Ct. Rep. 241; Puget Sound Traction Light & P. Co. v. Reynolds, 244 U. S. 574, 579, 61 L. ed. 1325, 1329.

"This court applied the established rule in *Home Teleph. & Teleg. Co. v. Los Angeles*, 211 U. S. 265, 53 L. ed. 176, 29 Sup. Ct. Rep. 50. That company's franchise was granted under the Broughton Franchise Act, which provided that every such franchise 'shall be granted upon the conditions in this act provided and not otherwise.' The city charter gave power to its council to fix charges for telephone service. The franchise stated that the rates should not exceed specified amounts. An ordinance prescribing lower rates was passed. The company brought suit for injunction against its enforcement on the ground that the ordinance violated the contract clause of the Constitution of the United States. The city insisted that it had not been empowered by the state to make such a contract, and this court upheld its contention. It said (p. 273): 'The surrender, by contract, of a power of government, though in certain well-defined cases it may be made by legislative authority, is a very grave act, and the surrender itself, as well as the authority to make it, must be closely scrutinized \* \* \*. The general powers of a municipality or of any other political subdivision of the state are not sufficient. Specific authority for that purpose is required.' And, dealing with the charter provision there relied on by the company, the court said (p. 274): 'The charter gave to the council the power 'by ordinance' \* \* \* to regulate telephone service and the use of telephones within the city, \* \* \* and to fix and determine the charges for telephones and telephone service and connections.' This is an ample authority to exercise the governmental power \* \* \* but entirely unfitted to describe the authority to contract. It authorizes command, but not agreement."

With these general principles in view, we must approach the problem here presented by a search for some constitutional or statutory delegation of the power to contract in respect to toll bridge rates, remembering that it is a power which must be clearly expressed, not to be implied.

Looking first at the state constitution, instead of finding any such delegation of authority, we find exactly the contrary. Section 21 of Article I provides:

"No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the legislature, nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

In Section 23 of the same article it is provided:

"This enumeration of rights shall not be construed to impair or deny others retained by the people."

Looking next at the various general laws and code provisions relating to the regulation of toll bridges, we can find no express grant of power to county supervisors which may be taken as a power to contract away the right of the people to demand just and reasonable utility rates.

The statute of 1881, p. 76, which still remained in effect on March 19, 1923, when petitioner's franchise was obtained, provided that Boards of Supervisors should have the power, among others, as follows:

"The power to grant franchises to individuals, or corporations, to construct bridges, *and the regulation of tolls thereon*, shall be exercised by the county on the left bank of all streams." (Emphasis supplied.)

Political Code Section 2848, in effect since 1872, reads as follows:

[fol. 123] "Whenever the board of supervisors are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment roll of the county. When the estimate of the board is made, if the same is not agreed to by the owner or keeper of the bridge or ferry, the same must be fixed by three commissioners, one to be appointed by the board of supervisors, one by the owner and keeper, and the third by the county judge, who must hear testimony and fix such value and cost according to the facts, and report the same to the board of supervisors under oath. In all estimates of the fair cash value of the bridge or ferry the value of the franchise must not be taken into consideration."



And Political Code Section 2845, as it read before amendment in 1923, provided that one of the powers of county supervisors shall be:

"1. Fix the amount of a penal bond to be given by the person or corporation owning or taking tolls on the bridge or ferry for the benefit of the county and all persons crossing or desiring to cross the same, and provide for the annual renewal thereof;

"2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually;

"3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year;

"4. Make all necessary orders relative to the construction, erection, and business of licensed toll bridges or ferries which they have by law the power to make. The Board of Supervisors may, at any time they see fit, authorize and [fol. 123½] maintain fords across any water within any distance of any licensed toll bridge or ferry."

From a reading of these laws in effect at the time the Supervisors of Contra Costa County granted to petitioner its franchise of February 5, 1923, one would conclude that there was manifested the clear intent to give to counties a continuing rate making power over toll bridges. And it might be said that the language used in these statutes, to use the words of the Home Telephone Company case above quoted, was "entirely unfitted to describe the authority to contract."

The source from which the petitioner purports to find a contracting power in the Boards of Supervisors is Political Code Section 2845 as amended in 1923, and the next following Section 2846, already quoted. The petitioner would read the latter section as an express covenant to the effect that the toll rates set forth in the franchise itself shall not within twenty years be reduced by the Supervisors unless the earnings had exceeded 15 per cent.

We need not here attempt to search for the legislative intent underlying these various sections of the Political Code. What we have attempted to do is merely to point to the problem involved. We believe that when the Legislature in 1937 declared that the rate fixing power should henceforth be vested in the Railroad Commission, without in any way qualifying that power, it must have thought that it was merely transferring to the Commission an authority [fol. 124] already committed to the Supervisors without qualification. And it must have assumed that the authority which it theretofore had given to Boards of Supervisors was a continuing power to fix rates, not one to barter away by entry into a rate contract for a term of years.

The respondent Commission submits, therefore, that when it undertook to perform the duty recently imposed upon it to fix rates for the petitioner's bridge, it rightfully considered its duty to be exactly the same as when undertaking the fixation of rates for all classes of utilities. It realized and expressed in its opinion that some departure from the usual standards was warranted. But the Commission had no power to override the legislative intent by imposing upon itself such a restriction of its rate making authority as to recognize the existence of a franchise contract exempting the petitioner from a reduction of its rates below a given rate of return.

Respectfully submitted, Ira H. Rowell, Roderick B. Cassidy, George E. Howard, Attorneys for Respondents.

Dated, San Francisco, California, March 11, 1938.

[fol. 125] Due service and receipt of a copy of the within is hereby admitted this 11th day of March, 1938.

Thelen & Marrin, Dunn, White & Aiken, Breed, Burpee & Robinson, Attorneys for Petitioner.

[fol. 126] [File endorsement omitted]

[fol. 127] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

REPLY OF AMERICAN TOLL BRIDGE COMPANY TO ANSWER OF  
RAILROAD COMMISSION TO PETITION FOR WRIT OF REVIEW—  
Filed March 23, 1938

This Reply is being filed in accordance with the provisions of Section 5 of Rule XXVI of the Rules for the Su-

preme Court and the District Courts of Appeal, on the subject of "Railroad Commission Cases".

We understand that the purpose of this Rule is to make sure that the Court is fully and properly advised as to the issues involved in pending Petitions for Writ of Review, so that the Court may act advisedly in passing on such petitions and in directing the Railroad Commission to certify its record to the Court (Sec. 67, Public Utilities Act).

[fol. 128] We do not understand that it would be proper for Petitioner to enter into a detailed analysis of the evidence in support of its position on the various issues, when the record is not as yet before the Court. Under the Public Utilities Act, the only procedure to get the Commission's record before the Court is to have the Court issue a writ of review and direct the Commission "to certify its record in the case to the Court" (Sec. 67, Public Utilities Act).

That is what Petitioner is respectfully requesting the Court to do.

Accordingly, we shall confine this Reply to pointing out briefly the issues and to drawing attention to the Court's procedure and responsibilities in connection therewith.

### 1. The Issues

The Answer herein admits that Petitioner has challenged the validity of the Railroad Commission's orders and decisions on the ground that they violate rights of Petitioner under both the Constitution of California and the Constitution of the United States (Answer, p. 2 lines 14-18). That these grounds are substantial appears from the Petition of American Toll Bridge Company for Rehearing before the Railroad Commission (Exhibit D to Petition for Writ of Review herein) and from the Petition for Writ of [fol. 129] Review, as well as from the Railroad Commission's Answer to the Petition.

The Railroad Commission's Answer concedes that Petitioner has raised the following issues, among others:

#### (a) Confiscation of Property—Carquinez Bridge

Petitioner has pointed out in its Petition for Rehearing before the Railroad Commission and in its Petition for Writ of Review herein that, in fixing the tolls to be charged by Petitioner, for automobiles and passengers on foot or in

vehicles moving over said Carquinez Bridge, the Railroad Commission

(1) Omitted substantial items of property used and useful in the operation of said Bridge;

(2) Made erroneously low allowances for other items of property so used;

(3) Failed and refused to make any allowance for the cost of developing the business or going concern value;

(4) Fixed an erroneously low figure as representing the fair value of Petitioner's property used in the public service;

(5) Made inadequate allowance for operating expenses necessarily to be paid;

(6) Fixed a rate of return far below the actual cost of [fol. 130] money used by Petitioner in the construction of said Bridge; and

(7) Fixed tolls which will not yield to Petitioner a fair return upon the fair value of its properties used and useful in the public service of owning and operating said Carquinez Bridge.

The Railroad Commission's Answer herein admits that these issues have been urged and presented by Petitioner (Answer, pp. 2-16).

When the Railroad Commission's record is before this Court, we shall make detailed response to each point appearing in the Commission's Answer under the issue of "Confiscation of Property—Carquinez Bridge".

#### (b) Arbitrary and Unfair Exclusion of Antioch Bridge

In said Petition for Rehearing before the Railroad Commission and in the Petition for Writ of Review herein, Petitioner urges that the Railroad Commission arbitrarily, unfairly and unjustly picked the Carquinez Bridge out from Petitioner's single and unified transportation system, consisting of both the Carquinez and the Antioch Bridges, and fixed tolls for the Carquinez Bridge alone, which is the more profitable portion of Petitioner's said single and unified transportation system, and by thus excluding from said decision and order the Antioch Bridge, fixed tolls

which, when applied to both bridges, as they inevitably [fol. 131] and necessarily must be, will deprive Petitioner of a fair return upon the fair value of the property devoted by it to its single, unified transportation system—all in violation of Petitioner's rights under both the State and the Federal Constitutions.

The Railroad Commission's Answer herein admits that this issue has been raised by Petitioner (Answer, pp. 17-18).

### (c) Impairment of Contract Obligations

Petitioner urged in its Petition for Rehearing before the Railroad Commission and in its Petition for Writ of Review herein that the Commission's decisions and orders impair the obligation of Petitioner's contract with the Board of Supervisors of Contra Costa County, in which the Board, acting under express authority conferred by the State Legislature, contracted with the grantees of the franchises for the construction and operation of the Carquinez and the Antioch Bridges that during the term of 20 years after the granting of said franchises the public authorities would not reduce the tolls set forth in the ordinance granting said franchises unless the Board of Supervisors should first have found that said tolls were yielding to the Toll Bridge Company a rate of return in excess of 15% on the actual cost of the construction or erection of said bridges and such additional income as will provide for the annual cost of operation, maintenance, amortization and taxes of said bridges. The Commission's action is assigned by Petitioner to be in violation of its rights under [fol. 132] both the State and the Federal Constitutions (Petition for Rehearing, pp. 39-47; Petition for Writ of Review, pp. 7-8).

The Railroad Commission's Answer herein admits that Petitioner has challenged its decisions and orders on this ground (Answer, pp. 19-27):

In order to determine this issue, which the Railroad Commission's Answer concedes to be "an important one" (Answer, p. 4, l. 2-3), it will, of course, be necessary for this Court to have before it the franchise ordinance, which is part of the Railroad Commission's record.

At page 21 of their Answer (lines 11-13), counsel for the Commission frankly concede that "there are many de-



cisions" in other States holding in accord with the Petitioner on this important issue, but counsel say that "we believe that there are none arising under the constitution and laws of this State". However, counsel cite no California case contrary to Petitioner's position nor do they state any reason why the law in California on this question should be different from the law in the other states.

In *Railroad Commission of California v. Los Angeles Railway Corporation*, 280 U. S. 145, the Supreme Court of the United States found that, on the facts of that case, the State of California had not delegated to the City of Los Angeles the authority to contract as to street railway fares. However, at page 151, the Court stated very clearly [fol. 133] the principle which Petitioner believes to be the law, as follows:

"It is possible for a State to authorize a municipal corporation by agreement to establish public service rates and thereby to suspend for a term of years not grossly excessive the exertion of governmental power by legislative action to fix just compensation to be paid for service furnished by public utilities. *Detroit v. Detroit Citizens' R. Co.*, 184 U. S. 368, 382. *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, 508, 515. *Public Service Co. v. St. Cloud*, 265 U. S. 352, 355. And where a city, empowered by the State so to do, makes a contract with a public utility fixing the amounts to be paid for its service, the latter may not be required to serve for less even if the specified rates are unreasonably high. *Detroit v. Detroit Citizens' R. Co.*, *supra*, 389. And, in such case, the courts may not relieve the utility from its obligation to serve at the agreed rates however inadequate they may prove to be. *Public Service Co. v. St. Cloud*, *supra*."

The contract in the present case arises out of statutory provisions specifically limited to public toll-bridges and ferries, which provisions are entirely different from those before the court in the *Los Angeles Railway Corporation* case.

At page 26 of its Answer, the Railroad Commission indulges in assumptions as to what the Legislature may or may not have thought when in 1937 (St. 1937, ch. 896, p. 2473) it amended the Public Utilities Act so as to include, for the first time, "toll-bridge corporations" among the

public utilities to be regulated by the Railroad Commission. On this subject, the Answer says (p. 26):

[fol. 134] "We believe that when the Legislature in 1937 declared that the rate fixing power should henceforth be vested in the Railroad Commission, without in anyway qualifying that power, it must have *thought* that it was merely transferring to the Commission an authority already committed to the Supervisors without qualification. And it must have *assumed* that the authority which it theretofore had given to Boards of Supervisors was a continuing power to fix rates, not one to barter away by entry into a rate contract for a term of years."

Regardless of what, if anything, the Legislature "thought" and what, if anything, they "assumed", the Legislature, of course, could not by this action impair the contract which an earlier Legislature had authorized the Board of Supervisors of Contra Costa County to make and which the Board actually did make under the authority so conferred.

We have in mind the statement very recently made by Chief Justice Hughes in *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, decided on April 27, 1936, that—

"Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands" (p. 52).

And we, in common with millions of other plain American citizens, find solace and hope in that other statement made by the great Chief Justice in the same case (p. 51):

"Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained."

[fol. 135] Turning from the Legislature to its own position in the matter, the Railroad Commission then says in the concluding paragraph of its Answer (p. 27):

"The respondent Commission submits, therefore, that when it undertook to perform the duty recently imposed upon it to fix rates for the petitioner's bridge, it right-

fully considered its duty to be exactly the same as when undertaking the fixation of rates for all classes of utilities. It realized and expressed in its opinion that some departure from the usual standards was warranted. But the Commission had no power to override the legislative intent by imposing upon itself such a restriction of its rate making authority as to recognize the existence of a franchise contract exempting the petitioner from a reduction of its rates below a given rate of return."

In this paragraph, the Commission "assumes" that it was the "legislative intent" that it should violate contract obligations. No such legislative intent appears in the 1937 amendments to the Public Utilities Act.

It is not a question of whether the Commission shall "impose upon itself such a restriction of its rate making authority as to recognize the existence of a franchise contract \* \* \*." It is rather a question of whether the Commission shall impose upon the Petitioner a gross and irreparable wrong by a clear violation of its rights under its contract with the Board of Supervisors of Contra Costa County.

We regret that the Commission did not frankly recognize that it took its new responsibilities with reference to toll-bridge corporations subject to their existing contract [fol. 136] rights with the public authorities.

The Legislature did not instruct the Commission to do otherwise; nor could it have lawfully done so.

In addition to the foregoing points which the Commission's Answer concedes that the Petitioner has raised, the following additional issues were tendered by Petitioner in its Petition for Rehearing before the Railroad Commission and in its Petition for Writ of Review herein; and Petitioner urged that in these respects, also, the Railroad Commission's orders and decisions violate Petitioner's rights under the State and Federal Constitutions:

(d) Petitioner pointed out that any reduction in tolls charged for transportation on the Carquinez Bridge must necessarily be followed by a similar reduction in the tolls of the Antioch Bridge and that the application of the tolls fixed by the Commission would clearly confiscate the single, unified transportation system of Petitioner consisting of the Carquinez and the Antioch Bridges (Petition for Rehearing, pp. 30-34; Petition for Writ of Review, p. 6).

(e) Petitioner pointed out that the Carquinez and Antioch Bridges are "wasting assets" because at the expiration of the franchises in 1948 the bridges will become the properties of the Counties of Contra Costa and Solano without the payment of any compensation to Petitioner; that unless by that time Petitioner has fulfilled its obligations to its bondholders and its stockholders it will never [fol. 137], be able to do so; and that under the tolls now fixed by the Railroad Commission the Company will fail by a very large sum to earn sufficient revenue to enable it to meet its obligations to its bondholders and stockholders (Petition for Rehearing, pp. 35-39; Petition for Writ of Review, pp. 6-7).

(f) Finally, Petitioner pointed out that, from the start to the finish, the case before the Railroad Commission was an effort to reduce the tolls charged for automobiles and passengers over the Carquinez Bridge down to the tolls charged by the two publicly owned and operated bridges across San Francisco Bay and that this analogy was patently false and misleading. (Petition for Rehearing, pp. 47-54; Petition for Writ of Review, p. 8).

Such reduction might be "popular" but it would be a deprivation of Petitioner's property without due process of law and a violation of other guarantees under both the State and the Federal Constitutions.

The foregoing are the issues before the Court in the above entitled proceeding.

## 2. Petitioner Stands Ready to Meet the Railroad Commission on Each Issue When the Commission's Record Has Been Certified to the Court

Each of the foregoing issues depends, in part, on evidence contained in the record made before the Railroad [fol. 138] Commission.

That record is not now before this Court and can be brought before the Court only in the manner provided by Section 67 of the Public Utilities Act, namely, by an order from the Court directing that the writ issue and that the Railroad Commission "certify its record in the case to the court".

When this has been done, Petitioner stands ready to submit to the Court, by brief and argument, in as helpful a

manner as possible, the evidence which bears on each issue raised by Petitioner, as well as the applicable principles of law and the leading decisions establishing the same.

### 3. It is the Court's Duty, in this Case, to Exercise an Independent Judgment on the Law and the Facts

From the issues raised by the Petitioner and also from the statements contained in the Railroad Commission's Answer, it is obvious that this is a case which falls squarely within the provisions of the Statute of 1933 (St. 1933, ch. 442, p. 1157) adding to Section 67 of the Public Utilities Act the following paragraph:

"In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the said constitutional question shall not be final."

It is, of course, clear that in order to be able to exercise its independent judgment on the facts, it will be necessary for the Court to have before it the Commission's record containing those facts.

### 4. Petitioner's Prayer for Stay of Railroad Commission's Orders and Decisions During Pendency of Writ of Review

On February 25, 1938, this Court made its order granting a temporary stay of the decisions and orders of the Railroad Commission to and including ten days after the entry of the order, conditioned upon the filing by Petitioner of a suspending bond in the sum of twenty-five thousand dollars. Such bond was approved and filed.

On March 4, 1938, this Court made its further order, on written stipulation, resetting the hearing on the order to show cause for April 5, 1938, and extending the order therefore made so as to grant a temporary stay until the hearing and determination of Petitioner's application for a



stay and suspension upon notice, as provided by Section 68 of the Public Utilities Act.

Attached to the Petition for Writ of Review on file herein, is the affidavit of Will F. Morrish, President of American Toll Bridge Company, setting forth the facts on which Petitioner asked both for an initial temporary stay and for [fol. 140] the suspension of the decisions and orders of the Railroad Commission during the pendency of the writ of review. From said evidence, it appears that unless said decisions and orders are stayed and suspended upon notice, during the pendency of the writ of review before this Court, great and irreparable damage will result to Petitioner for the reason that otherwise an average of at least seven hundred and fifty dollars (\$750.00) per day of revenue will be lost to Petitioner on each and every day during the pendency of said writ of review before this Court, none of which moneys Petitioner could thereafter recover from the corporations or persons who, in the meantime, had paid the reduced tolls.

In the Petition for Writ of Review herein (Par. XII), Petitioner offers to file, in connection with said stay or suspension after notice during the pendency of the writ of review before this Court, a suspension bond or bonds in such form and amount or amounts as this Court may approve and to keep such records and accounts, verified by oath, as may, in the judgment of this Court, show the amount to be charged or received by Petitioner in excess of the charges allowed by said decisions and orders of the Railroad Commission, together with the names and addresses of the corporations and persons to whom overcharges will be refundable in the event that said orders and decisions of the Railroad Commission are upheld.

[fol. 141] We respectfully request that the Court

1. Issue its writ of review directing the Railroad Commission to certify its record in the case to the Court (Section 67, Public Utilities Act); and

2. Make its order staying and suspending the decisions and orders of the Railroad Commission during the pendency of said writ before the Court (Section 68, Public Utilities Act).

Dated at San Francisco, California, this 22nd day of March, 1938.

Respectfully submitted, Thelen & Marrin, by Max Thelen; Dunn, White & Aiken, by B. R. Aiken, by Bauer E. Kramer; Breed, Burpee & Robinson, by Harold C. Holmes, Jr., Attorneys for American Toll Bridge Company.

[fol. 142] Receipt of copy of written Reply acknowledged this 23rd day of March, 1938.

Ira H. Rowell, Roderick B. Cassidy, George E. Howard, Attorneys for Respondents.

[fol. 143] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

WRIT OF REVIEW—Filed April 6, 1938

To the Railroad Commission of the State of California and to Wallace L. Ware, Frank R. Devlin, Ray L. Riley, Ray C. Wakefield and Leon O. Whitsell, as members of and constituting the Railroad Commission of the State of California:

Whereas, it manifestly appears to us by the verified petition of the above named petitioner on file herein, that in a certain proceeding entitled "In the Matter of the Investigation upon the Commission's own motion, into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company covering its operations of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano, Case No. 4259", you, [fol. 144] exercising judicial functions, have exceeded your jurisdiction, and that there is no appeal nor any other plain, speedy and adequate remedy; and being therefore willing to be certified of the said action or proceeding:

We Therefore, Command You, that you certify fully and return to this Court within ten (10) days from the date of the issuance of this writ a full and complete record of all proceedings in said Case No. 4259, for the purpose of hav-

ing the lawfulness of your decisions and orders in said proceeding inquired into and determined by this Court.

We further command you that you make return to this writ before the Supreme Court of the State of California en banc, at its Courtroom in San Francisco, California, on May 27, 1938 at 10:00 o'clock a. m.

Witness, the Honorable William H. Waste, Chief Justice of our Supreme Court, at San Francisco, California, this 6th day of April, 1938.

\_\_\_\_\_, by \_\_\_\_\_, Clerk. \_\_\_\_\_, by \_\_\_\_\_, Deputy.

[fol. 145] Received unsigned copy of this document this 6th day of April.

I. H. Rowell, Atty. for R. R. Com.

[fols. 146-151] (Order of Supreme Court of California staying and suspending decisions and orders of Railroad Commission pending writ of review, filed April 6, 1938, omitted in printing.)

[fols. 152-155] (Suspending bond during pendency of writ of review, filed April 6, 1938, approved by the Supreme Court of California, omitted in printing.)

[fol. 156] [File endorsement omitted]

[fol. 157] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

RETURN TO WRIT OF REVIEW AND MEMORANDUM OF  
DOCUMENTS—Filed April 14, 1938

I, H. G. Mathewson, Secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as Secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record

and proceedings before the Railroad Commission entitled as follows:

In the Matter of the Investigation, on the Commission's own motion, into the operations, rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of American Toll Bridge Company, San Francisco [fol. 158] Bay Toll Bridge Company, and Dumbarton Bridge Co., toll bridge corporations, as defined by Statutes 1937, Chapter 896. Case No. 4244.

In the Matter of the Investigation upon the Commission's own motion, into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez Straits between the Counties of Contra Costa and Solano. Case No. 4259.

That attached hereto are the pleadings, transcript of testimony, exhibits and record of said proceedings before the Railroad Commission of the State of California.

In Witness Whereof, I have hereunto set my official signature and affixed the seal of the Railroad Commission of the State of California, this 6th day of April, 1938.

H. G. Mathewson, Secretary, Railroad Commission  
of the State of California. (Seal.)

[fol. 159]

[Title omitted]

#### MEMORANDUM OF DOCUMENTS

##### Pleadings

1. Order Instituting Investigation into operations, etc., of American Toll Bridge Company, et al., filed August 27, 1937, Case No. 4244.

2. Notice of Hearing setting Case No. 4244 for hearing on October 26, 1937, dated September 22, 1937.

3. Order Instituting Investigation into rates, etc., of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez Straits between Contra Costa and Solano Counties, filed October 4, 1937. Case No. 4259. Hearing Set for October 26, 1937.

4. Decision No. 30612 issued by Railroad Commission on February 8, 1938.

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5. Petition of American Toll Bridge Company for rehearing, filed February 17, 1938.

6. Order Denying Rehearing, issued February 21, 1938. Decision No. 30649.

[fol. 160]

### Exhibits

7. Ex. 1.—Historical Summary—Cost of Financing—Assets and Liabilities—Revenues and Expenses, filed October 26, 1937.

8. Ex. 2.—Analysis of operating results of Carquinez Bridge for period May 21, 1927 (Date of Opening) to September 30, 1937, inc. relative to traffic, revenue and distribution of revenue, filed October 26, 1937.

9. Ex. 3.—Study dealing with cost of constructing Carquinez bridge, filed October 26, 1937.

10. Ex. 4.—Population Statistics, S. F. Chamber of Commerce (Chart), filed December 2, 1937.

11. Ex. 5.—Population growth, 1900-1945, S. F. and S. F. Bay area, S. F. Chamber of Commerce, filed Dec. 2, 1937.

12. Ex. 6.—Automobile registrations, S. F. Chamber of Commerce (Chart), filed December 2, 1937.

13. Ex. 7.—Automobile registrations, 1920-1945, S. F. and S. F. Bay Area, S. F. Chamber of Commerce, filed December 2, 1937.

14. Ex. 8.—Population record of Alameda County and principal cities therein for the years 1900 to 1940, inclusive, filed December 2, 1937.

15. Ex. 9.—Motor Vehicle Registration in Alameda County for years 1921-1936, inc., comparative record of passenger automobiles registered in Alameda County and the State of California for years 1921-1936, inc., filed December 2, 1937.

16. Ex. 10.—Vallejo, Population Statistics, filed December 2, 1937.

17. Ex. 11.—Population Statistics, Pittsburg Chamber of Commerce.

18. Ex. 12.—Population Statistics, Richmond Chamber of Commerce.

19. Ex. 13.—Population Statistics of San Leandro, Dec. 1, 1937.

[fol. 161] 20. Ex. 14.—Population Statistics, Contra Costa County, filed December 2, 1937.

21. Ex. 15.—Graph showing growth of population Eastern Contra Costa County, filed December 2, 1937.

22. Ex. 16.—Study dealing with cost of reproduction, new; Misc. physical costs; interest during construction for the Carquinez bridge, filed December 2, 1937.

23. Ex. 17.—Study of construction costs in connection with the Antioch bridge, filed December 2, 1937.

24. Ex. 18.—Origin and destination survey at Carquinez bridge, Antioch bridge, Martinez-Benicia ferry on Sunday, Oct. 17, 1937, and Wednesday, Oct. 20, 1937, filed December 2, 1937.

25. Ex. 19.—Analysis of the operating results of the Carquinez bridge, with estimates of future travel and revenue, filed December 2, 1937.

26. Ex. 20.—Population Statistics, Sonoma Valley Chamber of Commerce, filed December 2, 1937.

27. Ex. 21.—Balance Sheet, Income account, detail of Revenues and Expenses, filed December 2, 1937.

28. Ex. 22.—Estimated cash requirements, Carquinez and Antioch bridges, filed December 2, 1937.

29. Ex. 23.—Supplement to Exhibit No. 19, "Analysis of the operating results of the Carquinez bridge, with estimates of future travel and revenue, filed December 21, 1937.

Exhibits 24 and 25, Photographs, see Note below.

30. Ex. 26.—Blueprint, "Proposed highway bridge across Carquinez Strait, from Valona to Morrow Cove, etc.", filed December 22, 1937.

Exhibits 27 to 103, Photographs, see Note below.

31. Ex. 104.—American Toll Bridge Co., fender system at Carquinez bridge, rock embankment, Sheet 1. (Tracing.) Filed December 23, 1937.

32. Ex. 105.—Sheet No. 2 of Exhibit No. 104. Filed December 23, 1937.

[fol. 162] Exhibits 106 to 116, Photographs, see Note below.

33. Ex. 117.—Reasonable historical cost, Carquinez Bridge, American Toll Bridge Company, filed December 23, 1937.

34. Ex. 118.—Reproduction of Carquinez Bridge—New—American Toll Bridge Company, filed December 23, 1937.

35. Ex. 119.—Summary, Comparison of interest during construction, Carquinez bridge, filed December 23, 1937.

36. Ex. 120.—Reasonable Historical Cost, Antioch bridge, American Toll Bridge Company, filed January 10, 1938.

37. Ex. 121.—Reproduction of Antioch bridge—new—American Toll Bridge Company, filed January 18, 1938.

38. Ex. 122.—Copy of first War Department permit, approved April 17, 1923, filed January 18, 1938.

39. Ex. 123.—27 letters passing between War Department and American Toll Bridge Company.

40. Ex. 124.—Agreement of January 24, 1925, between American Toll Bridge Co. and Raymond Concrete Pile Co., filed January 18, 1937.

41. Ex. 125.—Letter, January 29, 1925, American Toll Bridge Co., to Raymond Concrete Pile Co., filed January 18, 1938.

42. Ex. 126.—Estimate of cash requirements, by years, for the period from January 1, 1938 to June 30, 1948, filed January 18, 1938.

43. Ex. 127.—Estimated value, Rodeo Vallejo Ferry Company, Franchise, filed January 19, 1938.

44. Ex. 128.—Earning statement, Martinez-Benicia Ferry & Transportation Co., 1935 to 1937, filed Jan. 19, 1938.

45. Ex. 129.—Cost of money and fair rate of return, American Toll Bridge Company, filed January 19, 1938.

46. Ex. 130.—Distribution of automobile traffic, Carquinez and Antioch bridges and Martinez Benicia Ferry, American Toll Bridge Company, filed January 19, 1938.

47. Ex. 131.—Reported and estimated traffic and revenue under present rates, Carquinez and Antioch bridges, 1926 to 1948, filed January 19, 1938.

[fol. 163] 48. Ex. 132.—Estimated earnings, American Toll Bridge Company, 1926-1948, Present tolls, filed January 19, 1938.

49. Ex. 133.—American Toll Bridge Company—Estimated increase in automobile traffic which would result from reduction of tolls. Suggested by J. G. Hunter, filed January 19, 1938.

50. Ex. 134.—Analysis on Traffic and revenue 1936 and 1937—Carquinez Bridge, present rates and rates proposed by J. G. Hunter, filed January 19, 1938.

51. Ex. 135.—Summary of Earnings, Carquinez bridge—American Toll Bridge Company, filed January 19, 1938.

52. Ex. 136.—Estimated taxable revenues, deductions therefrom and federal taxes thereon, by years, for period from January 1, 1938 to June 30, 1948, filed January 28, 1938.

53. Ex. 137.—Letter dated April 20, 1925, to American Toll Bridge Co., signed by Chas. Derleth, Jr.

54. Ex. 138.—Drawing C-4, dated Jan. 8, 1924, filed January 28, 1938.

55. Ex. 139.—Drawing No. C-5, dated Dec. 27, 1923, filed January 28, 1938.

56. Ex. 140.—Drawing No. D-9, Sept. 14, 1925, filed January 28, 1938.

57. Ex. 141.—Drawing No. D-11, Oct. 10, 1925, filed January 28, 1938.

58. Ex. 142.—Items of cost of American Toll Bridge Company not chargeable to tolls under San Francisco-Oakland Bay Bridge operation.

NOTE.—Exhibits 24, 25; 27 to 103, inclusive; 106 to 116, inclusive, are photographs showing the progressive construction of the Carquinez Bridge. These photographs may be found in Folders II and III in this proceeding.

[fol. 164]

### Transcripts

Vol. 1. Transcript of Testimony, Hearing at San Francisco, October 26, 1927. (Pages 1 to 49, inclusive.)

Vol. 2. Transcript of Testimony, Hearing at San Francisco, (Pages 50 to 220, inclusive.) December 2-3, 1937.

Vol. 3. Transcript of Testimony, Hearing at San Francisco, (Pages 221 to 354, inclusive.) December 21, 1937.

Vol. 4. Transcript of Testimony, Hearing at San Francisco, (Pages 355 to 469, inclusive.) December 22, 1937.

Vol. 5. Transcript of Testimony, Hearing at San Francisco, (Pages 470 to 577, inclusive.) December 23, 1937.

Vol. 6. Transcript of Testimony, Hearing at San Francisco, (Pages 578 to 685, inclusive.) January 18, 1938.

Vol. 7. Transcript of Testimony, Hearing at San Francisco, (Pages 686 to 778, inclusive.) January 19, 1938.

Vol. 8. Transcript of Testimony, Hearing at San Francisco, (Pages 779 to 842, inclusive.) January 28, 1938.

Folder I. Pleadings.—Exhibits Nos. 1 to 23, inclusive; Exhibit No. 26; Exhibit No. 104, Exhibit No. 105; Exhibits Nos. 117 to 142, inclusive.

Folder II. Photographs.—Exhibits Nos. 24, 25; 27 to 79, inclusive.

Folder III. Photographs.—Exhibits Nos. 80 to 103, inclusive; 106 to 116, inclusive.

Folder IV. Transcript of Testimony.—8 Volumes, pp. 1 to 842, inclusive.

[fol. 165] IN SUPREME COURT OF CALIFORNIA, IN BANK

[Title omitted]

ORDER OF SUBMISSION—Filed September 27, 1938

Matter (review) submitted.

Seawell, Acting Chief Justice.

Dated September 26, 1938.

[File endorsement omitted.]

[fol. 166] IN SUPREME COURT OF CALIFORNIA, IN BANK

S. F. No. 16,006

AMERICAN TOLL BRIDGE COMPANY (a Corporation),  
Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Wallace L. Ware, Frank R. Devlin, Ray L. Riley, Ray C. Wakefield and Leon O. Whitsell, as Members of and Constituting the Railroad Commission of the State of California, Respondents.

OPINION—Filed September 27, 1938

By the Court:

[fol. 167] The purpose of this proceeding is to review an order of the Railroad Commission reducing the tolls for automobiles and passengers over the Carquinez bridge. The main question is whether the rates so fixed are so low as to be confiscatory. Other questions also require determination.

On February 5, 1923, the board of supervisors of Contra Costa county granted to the Rodeo-Vallejo Ferry Company a twenty-five year franchise to construct and operate the Carquinez bridge across Carquinez straits between Crockett in Contra Costa county and Valona in Solano county. On June 4, 1923, the same board of supervisors granted to Delta Bridge Corporation a twenty-five year franchise to construct and operate a bridge across the San Joaquin



river near Antioch, between the counties of Contra Costa and Sacramento. Both franchises expire in 1948, at which time the property rights and title in and to the bridges revert to the adjacent counties without the payment of compensation to the franchise holders.

Those in control of the Rodeo-Vallejo Ferry Company organized the American Toll Bridge Company which became the owner of the Carquinez bridge franchise on July 2, 1923. That company also acquired the franchise to construct and operate the Antioch bridge as well as all of the outstanding stock of the Rodeo-Vallejo Ferry Company and of the Martinez-Benicia Ferry and Transportation Company which operates ferries between Martinez and Benicia. The Antioch bridge was opened to traffic in January, 1926, and the Carquinez bridge in May, 1927. The Antioch bridge crosses the stream at a point 25 miles above and east of the Carquinez bridge. Between the two bridges, about eight miles east of the Carquinez bridge, the ferry boats owned by the American Toll Bridge Company ply between the two shores:

The power and duty of granting authority to construct and operate a toll bridge over water dividing two counties [fol. 168] and to fix the tolls to be collected for the use thereof formerly resided in the board of supervisors of the county situate on the left bank descending the stream or arm of the bay. (Pol. Code, secs. 2843, 2845.) The board of supervisors of Contra Costa county, at the beginning of operations of the Carquinez bridge, fixed the tolls for automobiles at sixty cents and ten cents for passengers in vehicles or on foot. The bridge was in operation at this scale of tolls at the time of the reduction ordered by the commission.

By Statutes of 1937, page 2473, the jurisdiction of toll bridges was transferred to the Railroad Commission. On August 27, 1937, the commission on its own motion commenced in one proceeding the investigation of the tolls and affairs of all toll bridges which thus had come under its jurisdiction, including the Carquinez, the Antioch, the San Mateo and the Dumbarton bridges. Subsequently, on October 4, 1937, in a separate proceeding, the commission ordered an independent investigation into the reasonableness of the tolls charged upon the Carquinez bridge alone. After hearings and on February 8, 1938, the commission rendered its opinion and order establishing the tolls for

automobiles at forty-five cents and five cents for each passenger in vehicles or on foot. The validity of this order is here called into question.

Notice is first taken of the contentions with respect to the scope of the review herein. In 1933 the legislature added the following paragraph to section 67 of the Public Utilities Act (Stats. 1933, p. 1157), referring to orders and decisions of the Railroad Commission: "In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the said constitutional question shall not be final." Otherwise the findings on questions of fact remained final.

The petitioner invokes section 1 of article IV and paragraph 1, section 10, article 1, of the United States Constitution. It contends that this court's independent judgment as to all probative facts in the record must be exercised in determining whether the constitutional sections have been violated, and that the exercise of such independent judgment will disclose the confiscatory nature of the tolls fixed by the commission.

This court has heretofore recognized that the enactment of the quoted provision in section 67 of the Public Utilities Act afforded an answer to the often repeated contention or criticism in the state and federal courts, with special reference to the case of *Ohio Valley Water Co. v. Ben Avon Borough*, 253 U. S. 287, that legislation providing for regulation of public utilities should accord a complaining party an opportunity to obtain in a judicial tribunal an independent review of the law and the facts when the order or decision of the commission is challenged on federal constitutional grounds. (*Southern California Edison Co. v. Railroad Commission*, 6 Cal. [2d] 737, 744.) It was our conclusion in that case that the "amendment did not, in any substantial degree, change the rules in force prior thereto. The law of the state, both constitutional and statutory, before 1933 and as construed by this court, was at pains to preserve to the complaining party the right to challenge in this court any order or decision of the commission on federal constitutional grounds when, of course, such challenge

[fol. 169] could appropriately be made in the proceeding, and that an answer to such challenge included an independent consideration of both the law and the facts "even though the order of the court be a denial of an application for review". We there cited numerous cases wherein this court, prior to 1933, decided that neither the provision of section 67 which makes findings and conclusions of the commission on questions of fact final and not subject to review, nor the nature of the review proceeding, precluded an independent investigation into the facts when federal constitutional objections were available to the complaining party, regardless of whether the action of the commission was quasi-judicial, or legislative as in the fixing of rates. The scope of the judicial review as bearing upon the question of the court's independent judgment in connection with the rate-making power within constitutional restraints was stated in *St. Joseph Stock Yards Co. v. United States*, 298 U. S. 38, 50-54, as follows:

"The fixing of rates is a legislative act. In determining the scope of judicial review of that act, there is a distinction between action within the sphere of legislative authority and action which transcends the limits of legislative power. Exercising its rate-making authority, the legislature has a broad discretion. It may exercise that authority directly, or through the agency it creates or appoints to act for that purpose in accordance with appropriate standards. The court does not sit as a board of revision to substitute its judgment for that of the legislature or its agents as to matters within the province of either. \* \* \* (Citing cases.)

\* \* \* When the legislature itself acts within the broad field of legislative discretion, its determinations are conclusive. When the legislature appoints an agent to act within that sphere of legislative authority, it may endow the agent with power to make findings of fact which are conclusive, provided the requirements of due process which are specially applicable to such an agency, are met, as in according a fair hearing and acting upon evidence and not arbitrarily.

\* \* \* (Citing cases.) \* \* \* In such cases, the judicial inquiry into the facts goes no further than to ascertain whether there is evidence to support the findings, and the question of the weight of the evidence in determining issues of fact lies with the legislative agency acting within its statutory authority.

"But the Constitution fixes limits to the rate-making power by prohibiting the deprivation of property without due process of law or the taking of private property for public use without just compensation. When the legislature acts directly, its action is subject to judicial scrutiny and determination in order to prevent the transgression of these limits of power. The legislature cannot preclude that scrutiny and determination by any declaration or legislative finding. Legislative declaration or finding is necessarily subject to independent judicial review upon the facts and the law by courts of competent jurisdiction to the end that the Constitution as the supreme law of the land may be maintained. \* \* \* But this judicial duty to exercise an independent judgment does not require or justify disregard of the weight which may properly attach to findings upon hearing and evidence. On the contrary, the judicial duty is performed in the light of the proceedings already had and may be greatly facilitated by the assembling and analysis of the facts in the course of the legislative determination. Judicial judgment may be none the less appropriately independent because informed and aided by the [fol. 170] sifting procedure of an expert legislative agency. Moreover, as the question is whether the legislative action has passed beyond the lowest limit of the permitted zone of reasonableness into the forbidden reaches of confiscation, judicial scrutiny must of necessity take into account the entire legislative process, including the reasoning and findings upon which the legislative action rests. We have said that 'in a question of rate-making there is a strong presumption in favor of the conclusions reached by an experienced administrative body after a full hearing'. (Darnell v. Edwards, 244 U. S. 564, 569.) The established principle which guides the court in the exercise of its judgment on the entire case is that the complaining party carries the burden of making a convincing showing and that the court will not interfere with the exercise of the rate-making power unless confiscation is clearly established. (Los Angeles Gas Corp. v. Railroad Commission, 289 U. S. 287, 305; Lindheimer v. Illinois Telephone Co., 292 U. S. 151, 169; Dayton Power & Light Co. v. Public Utilities Commission, 292 U. S. 269, 298.) \* \* \* It follows, in the application of this principle, that as the ultimate determination whether or not rates are confiscatory ordinarily rests upon a variety of subordinate or primary findings of fact as to particular elements, such

findings made by a legislative agency after hearing will not be disturbed save as in particular instances they are plainly shown to be overborne."

And from *Los Angeles Gas Co. v. Railroad Commission*, 289 U. S. 287, 304, we quote: "We do not sit as a board of revision, but to enforce constitutional rights. (*San Diego Land & Town Co. v. Jasper*, 189 U. S. 439, 446.) The legislative discretion implied in the rate-making power necessarily extends to the entire legislative process, embracing the method used in reaching the legislative determination as well as that determination itself. We are not concerned with either, so long as constitutional limitations are not transgressed. When the legislative method is disclosed, it may have a definite bearing upon the validity of the result reached, but the judicial function does not go beyond the decision of the constitutional question. That question is whether the rates as fixed are confiscatory. And upon that question the complainant has the burden of proof and the court may not interfere with the exercise of the state's authority unless confiscation is clearly established." The court there also referred to *Minnesota Rate Cases*, 230 U. S. 352, 452, quoting at page 307: "It is fundamental that the judicial power to declare legislative action invalid upon constitutional grounds is to be exercised only in clear cases."

The first constitutional objection advanced by the petitioner is that the reduction of the prevailing rates is an impairment of the contract obligation between the county of Contra Costa and the petitioner. It bases its contention on the provisions of section 2845, subdivision 3, and section 2846 of the Political Code, and its claim that the provisions of those sections were a part of the contract between the grantor and grantee of the franchise. Subdivision 3 of section 2845, as it read at the time the franchise was granted, required that the board of supervisors granting authority to construct a toll bridge must at the same time, "3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent on the actual cost of construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with repairs and maintenance thereof for any succeeding year." Section [fol. 171] 2846, enacted in 1872, reads: "The license tax



and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the Board of Supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. \* \* \*

The petitioner construes the provisions of the foregoing sections, read together, as securing it against a reduction of the tolls during the specified period unless its net annual revenue exceeds fifteen per cent of the fair cash value. It may fairly be assumed from the evidence that the income in any year, after all deductions, has not equalled the designated fifteen per cent. Merit in the petitioner's contention depends, however, on the propriety of reading into the language of the sections an intent on the part of the legislature to declare that receipts from tolls which return a net annual income of fifteen per cent "not disproportionate" to the "fair cash value", and that it intended to encourage the investment of funds by guaranteeing such a return. This construction, however, fails to give full import to the language of the section which prohibits either an increase or a reduction in the tolls unless the receipts are shown to be disproportionate. The language contemplates increases as well as reductions at any time the disproportion is shown to exist, limited by the fifteen per cent maximum. Such language is inconsistent with any intent to enter into a contract that a fifteen per cent return will be assured to the grantee of the franchise, if the toll rate established produced that much. Rather is it to be assumed that the legislature intended, not only to afford an adequate and proportionate return to the grantee, but that it also intended some measure of protection to the public's right to be charged not more than a reasonable toll for the use of the bridge. Toll bridges in this state have been subject to legislative control since 1854. (*Newsom v. Board of Supervisors*, 205 Cal. 262, 266.) In 1872, when section 2846 was enacted by the legislature, sufficient scope was allowed between both interests, public and private, to permit adequate elasticity in the exercise of the legislative rate-making function in the light of prevailing economic conditions. Such a statute does not savor of a contract obligation to the grantee. Its object was to dele-

gate to and vest in the designated body the power to regulate tolls as circumscribed by the stated limitation. The courts have recognized that this was, and that the creation of a contract obligation was not, the purpose and object of such statutes. Of a statutory provision permitting participation in the rate-making function by two representatives on the board of commissioners of the Spring Valley Water Company selected at the time of incorporation (later changed by section 1, article XIV of the Constitution vesting the rate-making power in the board of supervisors), it was said: "These things are not of the contract; they appertain to the sovereignty of the state, and can not be bargained away," citing *Munn v. Illinois*, 94 U. S. 126.

The retention by the state of the power to regulate tolls was sustained where the statute involved provided for a legislative reservation to reduce the road tolls when it should appear that they produced an annual net dividend in excess of fourteen per cent, "so that it shall give that amount of net dividends per annum, and no more", and where by subsequent legislation rates which would produce [fol. 172] a return less than that were specified. (*Covington and Lexington Turnpike Co. v. Sandford*, 164 U. S. 578). The court supported its conclusion by the application of the principles relating to tax immunity statutes, including the doctrine that "all doubts upon the question must be resolved in favor of the public". It said: "The same principles should be recognized when the claim is of immunity or exemption from legislative control of tolls to be exacted by a corporation established by authority of law for the construction of a public highway. It is of the highest importance that such control should remain with the state, and it should never be implied that the legislative department intended to surrender it. Such an intention should not be imputed to the legislature if it be possible to avoid doing so by any reasonable interpretation of its statutes. It is as vital that the state should retain its control of tolls upon public highways as it is that it should not surrender or fetter its power of taxation." The court thereupon declared it to be the intention to pass to the new corporation, as successors of the original corporation, only the necessary powers, rights and capacities, and not any exemption from legitimate and ordinary legislative control. The same principle was later stated in the case of *Railroad Commission v. Los*

Angeles, 280 U. S. 145, 152, as follows: "The delegation of authority to give up or suspend the power of rate regulation will not be found more readily than would an intention on the part of the State to authorize the bargaining away of its power to tax \* \* \*" (Citing cases.) The principle is applicable in the present case to support the conclusion that the legislature did not create an immunity or exemption from the appropriate legislative control. Any such ambiguity is resolved in favor of the retention of the power to regulate. (*Freeport Water Company v. Freeport City*, 180 U. S. 587, 599; *Stanislaus County v. San Joaquin C. & I. Co.*, 192 U. S. 201.) In the last cited case a statute of 1862 provided for water rates which should "not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent per month upon the capital actually invested". A statute of 1885 changed the figure so that the net annual receipts should "be no less than six nor more than eighteen per cent" upon the value of the property actually used and useful to the business of furnishing water. The Supreme Court held that the statute of 1862 did not amount to a contract, and that the state had by section 31 of article IV (now article XII, sec. 1), of its Constitution reserved the power subsequently to alter the authority vested by the earlier statute. It said that "as the contract, if it existed, would take away from the legislature its otherwise undoubted right of regulation upon a subject of great public importance, there is still less reason for implying a contract which would prevent the state from using its power to that end in the future".

The foregoing discloses the inapplicability of certain decisions relied on by the petitioner, such as *Detroit v. Detroit Citizen's St. Ry. Co.*, 184 U. S. 368, wherein the court recognized the competency of a state legislature in the absence of constitutional prohibition, to authorize a municipal corporation to make a binding contract as to rates of fare with a street railway company, as distinguished from a mere delegation of authority to regulate. Such cases would not justify a conclusion in the present case that the provisions of the statute herein amount to an irrevocable contract for a minimum annual percentage of return to the petitioner. The power to contract, or the existence of a contract in such a case as distinguished from regulation must be so clear as [fol. 173] to be susceptible of no other construction. (*Home Telephone Co. v. Los Angeles*, 211 U. S. 265.) This dis-

poses of the petitioner's contention that the provisions of the statute with reference to tolls became a part of the franchise contract, or of any imputation that, as part of the contract, they are subject to any construction which includes a relinquishment of the power of regulation. By a parity of reasoning and pursuant to the foregoing cited decisions, the provisions of the statute may not be regarded as a contract that the rate-making power will always be vested in the board of supervisors. The reservation of the power to repeal or alter the law (Const. art. IV, sec. 31, now art. XII, sec. 1), has been held to enter into the contract with the corporation. (*Stanislaus County v. San Joaquin C. & I. Co.*, supra, p. 211; *Spring Valley Water Works v. Board of Supervisors*, 61 Cal. 2, 5; *Spring Valley Water Works v. Schottler*, 110 U. S. 347.)

The petitioner urges that the Carquinez and Antioch bridges serve the same territory and must be considered as integral parts of a single transportation system; therefore, that the commission exceeded its jurisdiction in prosecuting an investigation into and making its order and decision referable to the Carquinez bridge alone. The petitioner concedes that the bridges are to some degree competitive, and says that a reduction in the tolls of the Carquinez bridge will compel a reduction to the same level in the tolls of the Antioch bridge, as well as a reduction below that level of the tolls on the ferry line, which likewise is competitive. The fact that the bridges are competitive, together with a consideration of all the other relevant facts appearing, may be said to have justified the commission in concluding that they are not integrated into a single transportation system and that neither is used or useful in any service performed by the other. The Toll Bridge Company purchased and operated the competitive factors for the obvious purpose of reducing competition, and it has undoubtedly succeeded in accomplishing that end. It cannot expect more. In other words, it cannot hope, by purchasing nonmoney-making enterprises for the purpose of controlling competition, also to restrict the power of regulation in its own interests exclusively. The public interest as well as that of the corporation controlling the public toll highway must receive proper consideration. (*Covington & Lexington Turnpike Road Co. v. Sanford*, supra, 596-597.) There is no established precedent or authority presented by the petitioner which calls for

a declaration that under the facts of this case the Railroad Commission was compelled to treat the two bridges as integrated units. On the contrary it has been held that less than the whole property owned by a public utility may be fixed as the appropriate unit for rate-making purposes. (*Wabash Valley Elec. Co. v. Young*, 287 U. S. 488; *Gilchrist v. Interborough Rapid Transit Co.*, 279 U. S. 159.) The fact that the petitioner herein from the beginning of its operations kept but one set of books covering all transactions pertaining to both bridges does not conclude the matter in favor of its contention. The fact appeared in the *Gilchrist* case that the subway and elevated lines were treated in the accounts of the lessee of both lines as separate units. But that distinction would not justify the view that, had it appeared that they were treated as one unit, the conclusion would have been different. (See, also, *International Ry. Co. v. Prendergast*, 1 Fed. Supp. 623, citing additional authorities at page 626.) The condition existing in this case, namely, that neither the Carquinez bridge nor the Antioch bridge is to any degree used or useful in the [fol. 174] public utility service and operation of the other, distinguishes it from the case of *Coney v. Broad River Power Company*, 171 S. C. 377, 172 S. E. 437, relied upon by the petitioner. There the decision was that the commission in computing a rate base for tolls to be charged by the power company for furnishing electric energy, could not exclude from consideration the properties of the street railway system owned and operated by it. But that conclusion specifically depended on the fact there appearing that the functions were related and that all the properties were used or useful in the company's business of generating electricity and in its related business.

To what extent the single ownership of such competing units subserves the public welfare and protects the co-relative rights and interests of the franchise holders and the public, is a question primarily for the commission to decide. Unless its decision has been unreasonable or arbitrary and may therefore be said to violate a constitutional right of the petitioner, the conclusion of the commission should not be disturbed. We find no departure from the recognized precepts upon which the petitioner may rely in the conclusion of the commission that the petitioner is not entitled to have the investment and operating expense of



both bridges included in the rate base upon which to compute a toll for Carquinez bridge.

The next contention for discussion is that the rate ordered by the commission is confiscatory.

The opinion and order of the commission is dated February 8, 1938. It indicates that the commission was well aware of and considered the fact that the life of the franchise and the control of the properties will terminate in 1948 without compensation to the franchise holder, and that the operating properties must therefore be treated as a "wasting asset". It also appears that in fixing the tolls for the traffic over Carquinez bridge consideration was "given to the effect of such rates on the company as a whole".

The Toll Bridge Company was organized under the laws of Delaware in May, 1923, with a capital stock of \$5,000,000, which was transferred to a holding company having a similar name. In 1925 it incurred a bonded debt of \$4,500,000 of first mortgage seven per cent bonds and \$2,000,000 of second mortgage eight per cent bonds maturing in 1945. By the middle of 1935 it had reduced its capital stock to \$3,719,593 plus \$57,280 subject to reissue for contingencies, and had reduced its bonded indebtedness to \$4,180,000. At that time it called in its outstanding bonds and effected a refunding thereof through an issue of \$4,300,000 first mortgage bonds at five and one-half per cent (including the expense of the call and reissue), the principal of which in turn was reduced to \$2,491,500 by October 31, 1937. The commission found that the company's accounts showed that the actual investment in the Carquinez bridge structure, exclusive of lands, amounted to \$7,863,451, which, with land \$66,835, and furniture and fixtures, \$19,668, amounted to a total of \$7,949,954. The company's earnings have been sufficient to enable it to set up a reserve for depreciation of \$2,748,443 (accumulated on the six per cent sinking fund method based on operating life under the franchise designed to return the investment upon the termination of that period), and additional reserves of \$1,055,313; and to accumulate a surplus which on October 31, 1937, amounted to \$419,123.

The testimony of the witnesses varied as to the estimated reasonable cost of the structure, and cost to re-[fol. 175] produce new. The various estimates as sum-

marized in the findings and opinion of the commission are the following:

Book cost of bridge structure (Commission's witness Coleman)	\$7,863,451
Estimated reasonable cost of construction (Commission's witness Mitchell)	6,877,318
Cost to reproduce new (Commission's witness Mitchell)	6,340,844
Original cost (Company's witnesses Gerwick and Ready):	
• Bridge structure	\$7,863,451
Land	66,835
• Furniture and fixtures	19,668
Adjusted original cost (Gerwick and Ready)	8,332,622
Reasonable historical cost (Gerwick and Ready)	8,139,307
Reproduction cost new (Gerwick and Ready)	8,743,231

After consideration of all the figures presented, the commission adopted the reported original cost, namely, \$7,949,954, as the reasonable rate base. The estimated percentage of future annual net return was computed on the assumption that the reduction in the toll would be to a flat rate of fifty cents for each car including five passengers, and five cents for additional passengers, which was the rate charged on the San Francisco-Oakland bay bridge. The commission found that that rate, computed on the probable increase in traffic induced by the rate reduction, would produce annual net receipts amounting to approximately seven and one-half per cent on the adopted base. It said: "A reduction in rates will stimulate the traffic over the bridge, although the extent, of course, cannot be estimated with exactitude. The results estimated for the 1938 revenue should produce a return of approximately 7.5% on the investment in the bridge structure. When tested upon the bases usually followed by the commission such a rate of return is reasonable for this particular company, considering the unusual circumstances under which its properties were constructed and have been and are operated. However, for the time being, in order that the company may be assured of financial stability and to guard against possible inaccuracies in the estimate of induced traffic, by reason of rate reductions, a rate slightly higher than that proposed should be authorized." Thereupon the rate of 45 cents per car and five

cents for each passenger was designated by its order. The commission expressly reserved jurisdiction to "reopen this proceeding when experience has developed further data of traffic moving over the bridge under the proposed rates", and to adjust freight and other rates which were not to be deemed approved.

It appears in the record that the following percentages of net income had been earned by the company during the preceding eleven years:

Year	Capital	Per cent Return
1927	\$7,106,337	8.62
1928	7,365,297	6.82
1929	7,544,361	8.20
1930	7,777,981	9.50
1931	7,946,753	8.18
1932	7,954,819	6.42
1933	7,950,995	5.86
1934	7,946,464	6.84
1935	7,946,068	7.42
1936	7,947,411	10.89
1937	7,947,537	12.12

These net rates of return, as well as the estimated future net percentage of return estimated by the commission, do not include and are not the source of the accumulated reserves for the repayment of the full investment by the end [fol. 176] of the franchise term. Those rates of return are in addition to the amounts set aside for the return of investment, and represent the investor's annual reward for the use of capital.

The petitioner urges that account should have been taken of the fact that prior to 1935 the company paid no stock dividends and that a rate should have been fixed which would enable the company to earn sufficient to return to the stockholders dividends undeclared and assertedly unearned in the past. But past deficits may not be included in the computation of the base for toll regulating purposes. "Deficits in the past do not afford a legal basis for invalidating rates, otherwise compensatory, any more than past profits can be used to sustain confiscatory rates for the future. (Board of Commissioners v. New York Telephone Co., 271 U. S. 23, 31, 32.)" (Los Angeles Gas Co. v. Rail-

road Comm., 289 U. S. 287, 313. See, also, *International Ry. Co. v. Prendergast*, 1 Fed. Supp. 623, 630.)

The petitioner does not dispute the reasonableness in adopting the reported original cost as a rate base, nor the correctness of the commission's finding as to the amount thereof except that it contends that two items estimated by it should have been included or added thereto, namely, an allowance for cost of developing the business, or going concern value; and an allowance representing additional cost of interest during construction. The petitioner states that the commission allowed the reported actual expenditure of \$688,092.56, and no more, as interest during construction; that capital funds in the sum of \$1,377,522 derived from stock sales and advances by Rodeo-Vallejo Ferry Company, were expended for construction purposes prior to the time when the bond money became available, and that the interest item should be increased to \$1,070,761. It is therefore contended that the sum of \$382,688 should be added to the adopted rate base as partial cost of money during construction, although at the same time it is conceded that the petitioner's accounts do not show the actual expenditure thereof.

The petitioner computes the going concern value at \$300,000, which it also contends should be added to the rate base figure of \$7,949,954. It arrives at that estimate by fixing nine per cent as the cost of money, and taking "for the first five years of operation the very low figure of the deficiency of the income of the Carquinez bridge below the 9% cost of money shown by the evidence, with interest, the result is the sum of approximately \$300,000.00" which represents "5% of the cost of reproducing new the physical property, before consideration is given to overheads and is most reasonable under any accepted standard".

The addition to the rate base of these claimed omitted allowances produces a total of \$8,632,622, which the company proffers as the correct rate base. The petitioner urges that the estimated future net income from Carquinez bridge traffic will return but 6.6 per cent to the stockholders, computed on the adjusted base, which, it argues, considering all the factors and elements which have made the risk adventurous, not to say hazardous, is so low as to be confiscatory. One of the elements relied upon is the alleged higher cost of money to the company, which it places be-

tween nine and ten per cent. It urges that the net annual return should be equal at least to that cost.

The items for going concern value and additional money cost during construction are not shown, nor claimed, to have been actually incurred or expended, but are hypothetical allowances, and perhaps adjustable for acceptance [fol. 177] and inclusion in estimates representing reproduction cost new. It is stated in the commission's opinion that "the book figure includes certain expenditures for organization purposes whose reasonableness might well be questioned". In adopting the rate base those expenditures were nevertheless permitted to remain. Under any method of computation which the commission might pursue based on the various estimates before it, it does not appear that it would have arrived at a higher figure, even including appropriately adjusted allowances for the hypothetical costs claimed by the petitioner. The petitioner has not shown any error or arbitrary action on the part of the commission in not adding to the base figure the two hypothetical costs. The commission has therefore allowed all that could be required of it in respect to those items. (cf. *Wabash Valley Elec. Co. v. Young*, 287 U. S. 488, 500.)

In connection with the claimed item for going concern value, we should also note that there was not here encountered the complexity of starting a new utility whose service was the sale and distribution of a commodity, such as electrical energy, gas or water, which required the intricate balancing of innumerable costs in many departments in order to become established as a going concern. Compared to the services performed by such utilities the establishment of the operation of a toll bridge may be considered a fairly simplified task. The commission was fully justified in concluding that there existed here no such impressive features influencing the intangible element of value known as going concern as were referred to or enumerated in cases relied upon by the petitioner (see *McCardle v. Indianapolis Co.*, 272 U. S. 400; *Los Angeles Gas Co. v. Railroad Commission*, 289 U. S. 287, 313; *International Ry. Co. v. Pendergast*, 1 Fed. Supp. 623, 629), and that that element of value was given complete recognition by adopting the company's own record of the actual cost thereof. The commission's finding on this item is fully supported by *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*.



292 U. S. 290, wherein the court recognized that "going value is not something to be read into every balance sheet as a perfunctory addition. 'It calls for consideration of the history and circumstances of the particular enterprise' . . .", citing *Los Angeles Gas and Elec. Corp. v. Railroad Commission of California*, supra, at page 314. Continuing the court said: "Here the company was a small one and its organization simple. There was no diversified and complex business with ramifying subdivisions. We cannot in fairness say that after valuing the assets upon the basis of a plan in successful operation, there was left an element of going value to be added to the total. Even if the addition might have been made without departure from accepted principles, the omission to make it does not appear to have been so unreasonable or arbitrary as to overleap discretion and reach the zone of confiscation. 'It is necessary again, in this relation to distinguish between the legislative and judicial functions.' (*Los Angeles case*, supra, p. 314.) Much that the framers of a schedule are at liberty to do, this court in the exercise of its supervisory jurisdiction may not require them to do. For the legislative process, at least equally with the judicial, there is an indeterminate penumbra within which choice is uncontrolled."

Further sustaining authority is found in *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U. S. 398, 411-413, wherein objection to a disallowance of a going concern value was rejected when it appeared that such [fol. 178] actual cost was nominal because of absence of competition and had actually been included as part of the cost of operation.

The historical hazards and risks stressed by the petitioner were unquestionably taken into consideration by the commission and are reflected in the rate base adopted. The special "wasting asset" character of the physical properties was also duly considered, and in computing the net annual receipts, allowances were made for depreciation reserves, including amortization of the entire investment before the expiration of the franchise period. Volume of traffic and consequently net returns have been increasing and tending steadily upward since 1933 and undoubtedly will continue to do so because of the increase in the traffic due to the operation of the bay bridge. It is therefore apparent that the commission has given due weight and consideration to all relevant facts and criteria in arriving

at a proper base upon which it estimated the probable future net return. Considering the company "as a whole", with all the particular elements and factors bearing upon the question, we conclude that the method adopted by the commission in arriving at the value of the property for rate regulatory purposes is not shown to have been unlawful. And taking into consideration all of the factors which influenced the decision of the commission, as disclosed by the record, it cannot be said that adequate return has not been afforded to the petitioner.

Nor are we persuaded that the petitioner is entitled as a matter of right to a percentage of net return equal to what it claims is the cost of money to it. The stated percentage of money cost might historically be considered correct, but it relates to a period antedating 1936 when the company's bonded indebtedness was refunded. Here again, however, the petitioner may not be sustained in its claim of right to recoup past losses or expenses in its financing experiences. A glance at the figures of the present bond issue, the principal of which includes the expenses incurred in calling in the original issue and in issuing the new bonds, sufficiently indicates that the percentage claimed is not the measure of today's needs.

If time and experience prove that the expectations of the commission based on the percentage of anticipated increase in traffic induced by the reduction in rates, as computed by witnesses, fall short of realization, the petitioner will still be protected by an adjustment to be effected by the commission in the exercise of its reserved jurisdiction.

The petitioner claims that the commission erred in computing the net revenue upon which it estimated the percentage of return. The only claimed error in this computation is the allowance by the commission of income taxes on an accrual basis, rather than on the basis of actual expenditure in the base year. The contention is that the commission should have deducted income taxes, computed not on the income for the corresponding year, but on the income for the preceding year, on the theory that allowance should be made for the amount which is paid in the base year, rather than the amount accrued against the income of that year. We know of no practice or precedent in rate regulation which supports the theory of the petitioner and it has presented none. We perceive no error in the method of accounting which treats the income tax item on an accrual

basis for the purpose of arriving at net income for rate regulatory purposes.

The petitioner finally urges that the commission's findings, its conduct of the hearing, and the making of the order were not in accord with the principles of due process as reiterated and applied in the recent case of *Morgan v. United States*, 58 Sup. Ct. Rep. 773. In this connection it specifies that the separation of the properties of the Carquinez and Antioch bridges for rate regulatory purposes is against the "rudimentary requirements of fair play" and does not supply "those fundamental requirements of fairness which are the essence of due process in a proceeding of a judicial nature", mentioned in that case. The preceding discussion we think fully answers those contentions. Nothing appears which justifies a conclusion that all the essentials of a full and fair hearing before the Railroad Commission were not accorded the petitioner in compliance with the requirements of the constitutional mandate. The findings of fact, while not given numerical segregation, are stated with sufficient fullness in the opinion of the commission to apprise the parties and this court of all the facts supporting the commission's decision. Opportunity to examine and object to proposed findings before the decision was rendered was not essential. The number and complexity of findings, a lack of opportunity to examine which in the *Morgan* case evoked criticism, were not here present. The petitioner made its objections in a petition for rehearing filed with the commission, which was denied.

The rest of the petitioner's specified particulars of omission or commission in the matter of the procedure and conduct of the hearing before the commission relate to the procedure of defining the issues upon which evidence was received. It is not contended that the petitioner was not fairly informed of what the issues were to be or that the issues were not clearly defined and understood by all parties concerned during the course of the hearing. As stated in the still more recent case of *National Labor Relations Board v. Mackay Radio and Telegraph Company*, 58 Sup. Ct. Rep. 904, at 913, "as no other detriment or disadvantage is claimed to have ensued from the board's procedure the matter is not one calling for a reversal of the order. The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights. Compare *Morgan v. United States*, 298 U. S. 468, 56 S. Ct. 906, 80 L. Ed. 1288".

On its denial of a petition for rehearing in *Morgan v. United States*, 58 Sup. Ct. Rep. 773, 58 Sup. Ct. Rep. 999, the Supreme Court again adverted to the distinction thus made in the *Mackay Radio* case. We conclude that the procedure followed in the present matter has not infringed upon the rights of the petitioner vouchsafed to it by the state and federal Constitutions.

The order of the commission is affirmed. The order of this court directing a stay pending determination in this proceeding is discharged.

[fol. 180]

[File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed October 17, 1938

[fol. 181]

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[fol. 188] IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING

To the Honorable, William H. Waste, Chief Justice, and the Associate Justices of the Supreme Court of the State of California:

The petitioner, American Toll Bridge Company, respectfully petitions this Honorable Court to grant a rehearing in the above entitled proceeding.

The reduction which the Railroad Commission made in the tolls of the Carquinez Bridge will have the effect of [fol. 189] reducing the gross revenue of the Bridge from \$1,552,934.00 in 1937 to only \$1,143,520.00 in 1938. The amount of the reduction is \$409,414.00 per year which is a cut of 26.4 per cent.

When it comes to the net revenue, as distinguished from the gross revenue, the situation will be even more serious. This is for the reason that it will be necessary to keep the bridge going and that it will be impossible to make a reduction in the expenses of operation and maintenance commensurate with the reduction in the gross revenue. The reduction in the net revenue will be from \$963,816.00 in 1937 to \$570,298.00 in 1938. This is a reduction of \$393,518.00 per year, which is a cut of 40.8 per cent.

This drastic reduction was made in a case in which the Railroad Commission proceeded in entire disregard of the rights which petitioner claims under its contract with the County of Contra Costa.

This reduction was, furthermore, made in a proceeding initiated by the Railroad Commission itself, by a mere notice of investigation, without the framing of issues and in disregard of the due process of law claimed by petitioner under the Constitution of the United States as interpreted and applied by the Supreme Court of the United States in *Morgan v. United States*, 304 U. S. 1, and other cases.

It is respectfully submitted that this court, in deciding this case, has entirely overlooked or has misapprehended important points relied on by petitioner, as well as made numerous errors in statements of fact and conclusions, and [fol. 190] that the interests of justice require that a rehearing be granted so that said matters may be corrected.



We shall group the reasons in support of our petition under the following three general heads:

- I. Impairment of Contract Obligations;
- II. Confiscation; and
- III. Procedure before Railroad Commission—Denial of Due Process of Law.

Our references to the court's Decision will be to the printed copy published in Vol. 96, No. 4724, of "California Decisions", pages 367-381.

Emphasis in this petition is ours, unless otherwise specified.

## I

### Impairment of Contract Obligations

1. The court gave to the language of Sections 2845 and 2846 of the Political Code, as incorporated in the contract between the County of Contra Costa and petitioner, a curious and entirely unwarranted construction.

The relevant portions of Section 2845 of the Political Code, as the same read at the time when the County of Contra Costa enacted Ordinance No. 171, providing for the construction and operation of the Carquinez Bridge, were as follows:

[fol. 191] "The board of supervisors granting authority to construct a toll-bridge or to keep a public ferry, must at the same time:

"2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three dollars nor over one hundred dollars per month, payable annually.

"3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, which must not raise annually an income exceeding fifteen per cent on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year: " 7 " ."

Section 2846 of the Political Code has at all times, in and after 1872, read as follows:

"The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry." The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected."

That said two sections entered into the contract evidenced by said Ordinance No. 171 and formed a part of it, follows necessarily from the authorities and is here conceded.

Kennedy v. City of Gustine, 210 Cal. 18, 21;

Flagg v. Sloane, 135 Cal. App. 334, 336;

Frank v. Crescent Wharf & Warehouse Co., 59 Cal. App. 272, 275;

City of Cincinnati v. Public Utilities Commission of Ohio, 98 Ohio St. 320, 3 A. L. R. 705, 708;

6 Cal. Jur. 310.

That said two sections must be read together is equally [fol. 192] clear. In fact, the first sentence of Section 2846 says "as provided in the preceding section" and thus expressly ties the two sections together.

Reading the two sections together, the following situation appears:

(1) Section 2843 refers to the "amount of license tax" and also to the "rate of tolls" to be fixed by the board of supervisors at the time of the enactment of the ordinance granting the franchise and to remain effective until thereafter changed. The section also provides that the income shall, for the first year, be computed on the "cost of construction or erection" of the bridge and in succeeding years on the "fair cash value" thereof.

(2) Section 2846 refers to the "license tax" and the "rate of toll" effective in subsequent years, during the term of 20 years.

Under the specific provisions of Section 2846, the grantees of toll bridge franchises have the right not to have the tolls diminished during the term of 20 years.

"unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is *disproportionate* to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry."

In Section 2845, the Legislature itself has declared what [fol. 193] it meant by the word "disproportionate" as used in the next section.

Construing Sections 2845 and 2846 together, it is clear that what the Legislature had in mind was that tolls which yield up to 15% on the cost of construction or erection of the bridge or the fair cash value thereof, together with the necessary repairs and maintenance, are not to be regarded as "disproportionate" but that if and when the yield becomes more than 15% it will be deemed to be "disproportionate". In the latter event, even though this situation should develop within less than 20 years after the effective date of the franchise, the board of supervisors would have the right, under the contract, to reduce the tolls in the manner specified in the appropriate sections of the Political Code.

These contract provisions do not mean that American Toll Bridge Company is at this time necessarily entitled to a 15% return. They do mean, however, that the Company has a contract right to have the tolls specified by the board of supervisors of Contra Costa County in the ordinances granting the franchises not diminished by any public authority unless it should appear that the yield from such tolls has become in excess of 15%.

The Railroad Commission's brief concedes (p. 4) and this court found (Decision, p. 373) that the yield has never approached as much as 15 per cent.

In its brief herein, the Railroad Commission, while differing from petitioner as to the legal effect of the language, [fol. 194] nevertheless agreed with petitioner as to the meaning of the language of said Sections 2845 and 2846, as follows (Brief, p. 55):

"It may be conceded that the intent of section 2845(3), when read together with section 2846, and in the light of the earlier statutes, is that the boards of supervisors should not at any time during the life of the franchise . . . so reduce the tolls as to fail to yield the grantee a return of 15

per cent on the cost of construction or on some other valuation of the property exclusive of the franchise itself."

Turning now to the Decision herein, the court finds that the language of said Sections 2845 and 2846 does not give petitioner the contract rights on which petitioner has heretofore always relied. Referring to petitioner's construction of said language, the court said (Decision, p. 373):

"This construction, however, fails to give full import to the language of the section (Section 2846) which prohibits either an *increase* or a *reduction* in the *tolls* unless the receipts are shown to be disproportionate."

Continuing, the court said:

"The language contemplates *increases as well as reductions* at any time the disproportion is shown to exist, limited by the fifteen per cent maximum. Such language is inconsistent with any intent to enter into a contract that a fifteen per cent return will be assured to the grantee of the franchise, if the toll rate established produced that much."

As we read the Decision, the above analysis and reasoning are the foundation on which the court erected the conclusion that the language on which petitioner relies is not the language of contract.

We now draw the court's attention specifically to the fact [fol. 195] that the above analysis and reasoning and the conclusion based thereon are fatally defective for the reason that the court has failed to give proper effect to the distinction between license tax and the rate of toll and has, accordingly, entirely misconstrued the language of the first sentence of said Section 2846.

Section 2845(2) refers to the amount of the license tax. The court made no reference to that paragraph and its failure to do so may perhaps account in part for its misconstruction of the first sentence of Section 2846.

Section 2845(3) refers to the rate of tolls. We thus have two separate paragraphs of Section 2845 referring separately to these two different items—the license tax and the tolls.

Then comes Section 2846, the first sentence reading as follows:

"The license tax and rate of toll fixed as provided in the preceding section must not be *increased* or *diminished* dur-

ing the term of twenty years, at any time, unless it be shown to the satisfaction of the board of supervisors that the receipts from tolls in any year is *disproportionate* to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry."

Without noticing the distinction between the license tax and the rate of toll, the court erroneously holds that the words "increased" and "diminished" each applies to both the license tax and the rate of toll and on that erroneous foundation reaches the conclusion that we have here a flexible system of ups and downs in the rate, which can spell [fol. 196] only a system of flexible regulation by public authority as distinguished from fixed contract rights.

The court's error apparently arose from the failure to observe that the words must be construed distributively, the words "license tax" and "increased" going together and the words "rate of toll" and "diminished" going together.

If the court's construction that the words "increased" and "diminished" both apply to "rate of tolls" and also to "license tax" is correct, then note the following results:

(1) It would follow that the license tax cannot be diminished unless the yield becomes disproportionate (i. e., in excess of 15 per cent): but that is the very time when, by reason of more moneys in the treasury, the toll bridge company could pay a higher license tax.

(2) Likewise, it would follow that the rate of toll cannot be increased unless the yield becomes disproportionate (i. e., in excess of 15 per cent): but that is the very time when, by reason of higher earnings, the rate of toll should be diminished, not increased.

The Legislature, of course, could not have intended any such results.

It seems very clear to us that the proper construction must be as follows:

(1) The license tax must not be increased unless the yield [fol. 197] becomes in excess of 15 per cent. In such event, the company has more money and can pay a higher license tax. But, in order to prevent excessive license taxes at such times, the last sentence of Section 2846, which is also overlooked in the court's Decision, provides:



"The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected."

(2) The rate of toll must not be diminished unless the yield becomes in excess of 15 per cent. In that event, fairness to the public requires that the tolls be reduced so that the yield shall not be in excess of 15 per cent, that being the standard of reasonableness established by the Legislature.

Section 2846 does not provide for any increase in the rate of tolls after they are first written into the ordinance granting the franchise. The investor must be assumed to enter upon the project with his eyes open. If the rate of tolls written into the ordinance at the time of its adoption by the board of supervisors will not, in the opinion of the proposed toll bridge owner, yield a satisfactory return, he simply declines to accept the franchise; but if he accepts the franchise and constructs the bridge, he must take the consequences if the tolls fail to yield the expected revenue.

On the other hand, if the toll bridge owner can be forced to operate on a low return, if he has misjudged his ability [fol. 198] to earn a fair return, on the tolls as fixed, the common dictates of fair play require (and the statute, as we believe it must be interpreted, provides) that he has a contract right not to be deprived of a reasonable return under the standard written into the contract by the Legislature, if the volume of the traffic should confirm his original expectations.

The authorization of such a contract by the Legislature is entirely consistent with the proper demands of public policy. An intending toll bridge constructor has a measure of protection in the event the project is successful and the public has the assurance that the tolls will be reduced in the event the yield becomes greater than that specified under the standard of reasonableness of tolls established by the Legislature.

Under such a policy, a tremendously hazardous and difficult project such as the Carquinez Bridge can be constructed.

Without the contract rights which they thought they were securing, no investors of ordinary common sense would ever have risked their money in such an enterprise. The Carquinez Bridge, the pioneer of all the San Francisco Bay Bridges, would never have been built.

We believe that the error of the court's construction of [fol. 199] Section 2846 is so clear that further comment would be unwarranted. And with that erroneous construction falls also the court's conclusion erected thereon, to the effect that the language of Sections 2845 and 2846 of the Political Code, when read into the contract between the County of Contra Costa and the petitioner, is not the language of contract.

2. The court entirely overlooked the legislative history of toll bridge construction in California, as found in the General Laws and Special Acts prior to 1872, showing a clear intention on the part of the Legislature that Sections 2845 and 2846 of the Political Code should grant contract rights to grantees of toll bridge franchises.

At pages 13 to 27 of our closing brief, we narrated what was, to our mind, a very interesting story of the development of public regulation of the construction and operation of toll bridges in California from the early '50's to the time of the enactment of Sections 2845 and 2846 of the Political Code in 1872.

The court's Decision in no way refers to the matter.

As we pointed out, the toll bridge franchises granted either by the Legislature itself or by boards of supervisors at first merely provided that the toll bridge owners should be permitted to charge such tolls as the court of sessions and later the boards of supervisors should fix annually (Closing [fol. 200] Brief, pp. 13-15).

The second stage in the evolution of toll bridge regulation consisted of a series of Special Acts enacted in 1857 and a number of subsequent years, principally 1861-4. These Acts specified that the operators could charge such rates of toll as the boards of supervisors might fix annually "provided, that the Legislature may at all times, modify or change the rates as fixed" (Closing Brief, p. 15).

Under both types of acts the matter of rate regulation was in the hands of the courts of sessions and then of the boards of supervisors, unrestricted by any statutory limitation as to rate of return. The grantees of the toll bridge franchises had no contract protection against action by boards of supervisors reducing their rates.

Because of this situation, there came the third stage in the evolution of toll bridge regulation. Beginning with 1862

and extending to 1872, General Laws and Special Acts provided, substantially, that the operators of the toll bridges could charge such rates as the boards of supervisors should annually prescribe but there followed a provision of the general tenor that the board of supervisors should not fix the rates of toll so low as to make the net income less than a specified percentage per annum upon the cost or fair value or some similar specified base figure, of the toll bridge property. In our closing brief, we quoted the exact language of these various statutes (Closing Brief, pp. 17-23).

At this third and last stage prior to 1872, the Legislature [fol. 201] clearly entered the realm of contract and provided that the toll bridge operators thereafter receiving franchises should be protected by contract provisions against reduction of tolls so as to yield less than a specified rate of return.

This was the situation when the Legislature, in 1872, enacted Sections 2845 and 2846 of the Political Code. What the Legislature then did was clearly to continue in effect the policy which had been evolved as the result of 20 years of experience in the granting of toll bridge franchises and to provide that, although the boards of supervisors could pass upon the tolls each year, they should be subject to the very definite limitation—a contract right in the grantees—that they could not reduce the tolls so low as to yield less than the specified return.

Sections 2845 and 2846 of the Political Code are merely a recognition of the evolution of toll bridge franchise regulation from the earlier unlimited right of boards of supervisors to fix such tolls as they might please, to the later limitation of such right by appropriate contract protection accorded to the grantees of the franchises.

We respectfully submit that if the court had given consideration to the legislative history of toll bridge construction and operation up to the enactment of Sections 2845 and 2846 of the Political Code in 1872, the court would have concluded that said legislative history supports and gives emphasis to petitioner's construction of said Sections 2845 and 2846 and to petitioner's claim that the Legislature in [fol. 202] tended, by the enactment of said Sections, to give toll bridge operators the contract protection which petitioner claims.

3. The court failed to follow the agreement between the Railroad Commission and petitioner as to the meaning of

the language of Sections 2845 and 2846 of the Political Code and adopted a construction for which neither party contended.

As we have already pointed out, the Railroad Commission in its brief (p. 55) agreed with petitioner as to the proper meaning of the language of Section 2845, when read together with Section 2846 of the Political Code. There was agreement that the language means that the boards of supervisors should not at any time during the life of the franchise so reduce the tolls then in effect as to fail to yield the grantee a return of less than 15 per cent on the specified rate base. Said Sections do not give the boards of supervisors any authority to increase the tolls above those at any time in effect.

Neither the Railroad Commission or petitioner construed said Sections as giving the boards of supervisors any authority to reduce the license taxes nor to increase the rates of toll.

The court's Decision adopted a construction which neither party to the litigation urged as correct.

We urge the desirability of having the court, on rehearing, [fol. 205] give further consideration to this issue.

4. The court failed to give petitioner the benefit of the contract which it found to exist and to the burdens of which it held petitioner to be liable in *County of Contra Costa v. American Toll Bridge Company*, 10 Cal. (2d) 359. The court did not even cite said decision.

In *County of Contra Costa v. American Toll Bridge Company*, 10 Cal. (2d) 359, decided as recently as December 11, 1937, this court gave consideration to the very ordinance here at issue, namely, Ordinance No. 171 of the Board of Supervisors of Contra Costa County, granting the franchise for the construction and operation of the Carquinez Bridge.

The court there found that said Ordinance and its acceptance constituted a contract between the County of Contra Costa and this petitioner and that this petitioner was bound by the burdens of that contract, specifically its provision for the annual payment to the adjacent counties of two per cent of the gross tolls collected from the operation of the Carquinez Bridge.

In its present Decision, the court did not even mention its decision in the *County of Contra Costa* case.

We submit, very respectfully, that it is not just to hold petitioner to be bound by the burdens of its contract and yet to deny to petitioner the benefits of the same contract.

We earnestly request that this matter, which was in no [fol. 204] way referred to by the court in its Decision, be given serious consideration on rehearing.

5. The cases cited by the court in support of its conclusion refer to entirely different situations and are not in point.

In *Spring Valley Water Works v. Schottle*, 110 U. S. 347, and *Stanislaus County v. San Joaquin and King's River Canal and Irrigation Company*, 192 U. S. 201, the question was simply whether the people of the State of California had reserved power to enact legislation which would have the effect of amending a statutory provision which was part of the charter of a California corporation.

Section 31 of Article IV of the Constitution of California, adopted in 1849, read as follows:

*"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed."*

In view of this specific provision of the Constitution of California referring to the laws under which California corporations were formed, the Supreme Court of the United States, of course, held in both of said cases that the provisions of the statutes under which the California corporations had been incorporated could be amended or repealed (Closing Brief, pp. 29-36).

In the present case, there is no issue whatever with reference to the amendment or repeal of any provision of the articles of incorporation of American Toll Bridge Company [fol. 205] or of the statutes under which that corporation was incorporated. The statutory provisions here under consideration are Sections 2845 and 2846 of the Political Code, which provisions have nothing to do with a corporation's articles of incorporation and are equally applicable whether the grantee of a toll bridge franchise is a corporation, a partnership or an individual. These provisions have nothing whatever to do with the powers of California corporations.



Railroad Commission of California v. Los Angeles Railway Corporation, 280 U. S. 145, cited in the Decision herein (p. 374), is one of the cases relied upon by petitioner. While, in that case, the Supreme Court of the United States found that, on the facts of that case, the State of California had not delegated to the City of Los Angeles the authority to contract as to street railway fares, the court, at page 154, stated very clearly the principle which the petitioner believes to be the law, as follows:

"It is possible for a State to authorize a municipal corporation by agreement to establish public service rates and thereby to suspend for a term of years not grossly excessive the exertion of governmental power by legislative action to fix just compensation to be paid for service furnished by public utilities. *Detroit v. Detroit Citizens' R. Co.*, 184 U. S. 368, 382; *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, 508, 515. *Public Service Co. v. St. Cloud*, 265 U. S. 352, 355. And where a city, empowered by the State so to do, makes a contract with a public utility fixing the amounts to be paid for its service, the latter may not be required to serve for less even if the specified rates are unreasonably high. *Detroit v. Detroit Citizens' R. Co.*, *supra*, 389. And, in such case, the courts may not relieve the utility from its obligation to serve at the agreed rates however inadequate they may prove to be. *Public Service Co. v. St. Cloud*, *supra*."

[fol. 206] While the court, in *Home Telephone and Telegraph Company v. City of Los Angeles*, 211 U. S. 265, found that on the facts of that case the Legislature had not conferred upon the City of Los Angeles the power to contract with reference to telephone rates, the court, at page 273, states the rule as follows:

"It has been settled by this court that the State may authorize one of its municipal corporations to establish by an inviolable contract the rates to be charged by a public service corporation (or natural person) for a definite term, not grossly unreasonable in point of time, and that the effect of such a contract is to suspend, during the life of the contract, the governmental power of fixing and regulating the rates. *Detroit v. Detroit Citizens' St. Ry. Co.*, 184 U. S. 368, 382; *Vicksburg v. Vicksburg Water Works Co.*, 206 U. S. 496, 508."

The question at issue in the Home Telephone and other cases cited in the court's Decision herein was whether the Legislature had delegated to a political subdivision the right to contract with designated classes of public utilities with reference to the rate of fare or toll. In the case now before this court, said question is not involved, for the reason that the provisions here under consideration (Sections 2845 and 2846 of the Political Code) were written into the contract not by a subordinate political agency but by the Legislature itself. No question arises here with reference to the authority of a political subdivision. We do not believe that anyone will challenge the right of the Legislature itself to enact the provisions here under consideration and to make them a part of a franchise contract.

In *Covington and Lexington Turnpike Road Company v. [fol. 207] Sanford*, 164 U. S. 578, the governing facts were quite different from those which are set forth in this court's reference to that decision (Decision, pp. 373-4).

It appeared that Covington and Lexington Turnpike Road Company was incorporated by an Act of the Legislature of Kentucky approved on February 22, 1834, with authority to construct and permanently maintain a turnpike road from Covington to Lexington, Kentucky. By the nineteenth section of the statute, the company was authorized to collect certain specified tolls. Section twenty-six provided as follows:

"That if at the expiration of five years after said road has been completed, it shall appear that the annual net dividends for the two years next preceding the said company, upon the capital stock expended on said road and its repairs, shall have exceeded the average of *fourteen per cent per annum* thereof, then and in that case, the legislature reserves to itself the right, upon the fact being made known, to reduce the rates of toll, so that it shall give that amount of net dividends per annum, and no more."

The Turnpike Company contended and the Supreme Court agreed that said section twenty-six was part of the defendant's contract with the State and that it granted to the Turnpike Company a contract right to the earning therein specified (pp. 581, 586).

The questions before the Supreme Court in that case arose out of the subsequent statutes by which two new turn-

pike corporations were later incorporated and the turnpike company to whom the above rights had been granted in 1834 passed out of existence. The question at issue was simply whether or not the above contract rights had passed over [fol. 208] to the two new corporations. The court found that the situation as to the two new corporations was entirely different from the situation as to the original corporation and that the Legislature had not provided that the two new corporations should have contract rights similar to those of the original corporation.

At page 586, the court states the question at issue as follows:

*"Was the Covington and Lexington Turnpike Road Company entitled, under its charter, to be exempt from legislation that would prevent it from earning at least fourteen per cent 'upon the capital stock expended upon said road and its repairs', as prescribed in the act of 1834?"*

Referring to this question, the court said (p. 586):

*"The act of 1834 having given to the original corporation an exemption or immunity from legislation that would prevent it from earning as much as fourteen per cent upon the capital stock expended upon its road and for repairs, the contention of the defendant is that this exemption or immunity passed to the two corporations created by the act of 1851, and which, by the terms of that act, succeeded 'to all the powers, rights and capacities' granted by the act of 1834 to the original corporation."*

The Supreme Court of the United States here found very definitely that the Act of 1834 gave to the original turnpike corporation an exemption or immunity from legislation which would prevent it from earning as much as fourteen per cent upon the capital stock expended upon its road and for repairs. Basing its decision on that assumption, the court then went on to consider the entirely different question as to whether or not the Legislature had granted these contract rights to the two new turnpike companies. This question the court answered in the negative.

[fol. 209]. The entire decision proceeds on the assumption that section twenty-six of the Act of 1834 formed part of the contract between the Turnpike Company and the State and that the Turnpike Company's rights under said con-

tract were entirely valid. Under said decision, there is no question that said contract rights would have continued in full force and effect had it not been for the entire change in circumstances, under which two new turnpike companies were created and the old company went out of existence without any action by the Legislature clearly conferring on the two new turnpike companies the contract rights which had been originally conferred upon the first turnpike company.

Hence, the Covington case, instead of being authority to support the court's Decision in the present case, has the very opposite effect.

6. The court erroneously failed to give effect to the decisions of the Supreme Court of the United States and other courts which sustain the authority of the Legislature to grant or authorize the granting of contract rights such as those here under consideration.

While it is, of course, true that the surrender by contract of a power of government will be closely scrutinized (*Home Telephone and Telegraph Company v. City of Los Angeles*, 211 U. S. 265, 273), it is also true that the reports of the decisions of the Supreme Court of the [fol. 210] United States and other courts are full of cases in which the court recognized the authority of the Legislature to make or to authorize the making of contracts containing definite public utility rates or fares which could not be changed by public authority during a specified reasonable time, or only if the yield should become greater than the one specified in the contract, and found that on the facts of the case such contract had been lawfully entered into.

Among these cases are the following decisions of Federal courts:

*Los Angeles v. Los Angeles City Water Company*,  
177 U. S. 558;

*Detroit v. Detroit Citizens' Street Railway Company*,  
184 U. S. 368, 382, 384, 386;

*City of Cleveland v. Cleveland City Railway Company*, 194 U. S. 517;

*Vicksburg v. Vicksburg Waterworks Company*, 206  
U. S. 496, 508;

- City of Minneapolis v. Minneapolis Street Railway Company, 215 U. S. 417;  
 Detroit United Railway v. State of Michigan, 242 U. S. 238;  
 Columbus Railway, Power & Light Company v. City of Columbus, 249 U. S. 399;  
 St. Cloud Public Service Company v. City of St. Cloud, 265 U. S. 352;  
 Omaha Water Co. v. City of Omaha, 147 Fed. 1;  
 Columbus Railway, Power & Light Co. v. City of Columbus, 253 Fed. 499;  
 Hillsdale Gaslight Co. v. City of Hillsdale, 258 Fed. 485;  
 [fol. 211] Nebraska Gas & Electric Co. v. City of Stromsburg, 2 Fed. (2d) 518;  
 Cincinnati N. & C. Ry. Co. v. City of Cincinnati, 71 Fed. (2d) 124.

These are principally cases in which the question at issue was whether or not the Legislature could confer on a subordinate political subdivision authority to enter into a binding contract as to public utility rates for a reasonable period of time.

As already pointed out, the case now before this court is even simpler for the reason that there is not involved here any question of delegation by the Legislature to a subordinate political agency of the right to enter into a contract as to rates or tolls. Here the Legislature itself enacted the contract provisions.

We do not find in the court's Decision herein any reference to the above distinction nor anything to show that the court realized that this is a case in which there can be no question of the authority of the Legislature to act.

On the other hand, as we have hereinbefore pointed out, the Supreme Court of the United States in the Covington case (164 U. S. 578) assumed, as the foundation for its decision, that a statute enacted by the Legislature itself and providing for a yield up to fourteen per cent per annum conferred upon the Turnpike Company a contract right to receive such yield.

We respectfully suggest that it would be proper, on re-hearing, to make a re-examination of the decisions of the [fol. 212] Supreme Court of the United States, bearing in mind the fact that in the present case the provisions on



which petitioner relies are not the act of some subordinate political agency but the act of the Legislature itself.

7. The court entirely overlooked petitioner's concluding point under this head that, even assuming for the sake of the argument that the language of Sections 2845 and 2846 of the Political Code is the language of regulation and not that of contract, nevertheless the Legislature of 1937 did not in fact repeal or amend Sections 2845 and 2846 of the Political Code and that the Railroad Commission, stepping into the shoes of the Board of Supervisors of Contra Costa County, is still obligated to follow as to toll bridge companies the standard of reasonableness of rates established by said Sections 2845 and 2846 of the Political Code.

The point thus overlooked by the court is crucial and would, if decided in favor of petitioner, determine the entire case in its favor.

The question is not what the Legislature might have done in 1937 in the exercise of its power of regulation, but what it actually did do in 1937.

The point is fully presented in petitioner's closing brief, pages 80-88, to which the court is respectfully referred.

[fol. 213] As we there pointed out, the Legislature, by the Act of July 1, 1937, under which the Railroad Commission claims, conferred on the Commission no authority to interfere with the standard of reasonableness of tolls contained in Sections 2845 and 2846 of the Political Code and the Railroad Commission, in stepping into the shoes of the Board of Supervisors of Contra Costa County, is bound by said standard of reasonableness.

We believe that a rehearing should be granted in order to enable the court to pass upon this important point, which is entirely overlooked in the Decision herein.

## II

### Confiscation

8. The court erred in holding that the Railroad Commission made the necessary findings of fact.

It is elemental that it is the duty of an administrative tribunal such as the Railroad Commission to set forth "the basic and essential findings required to support the Commissioner's order".

In *Florida v. United States*, 282 U. S. 194, the order under consideration was an order of the Interstate Commerce Commission dealing with rates on logs moving by railroad between points within the State of Florida. The Commission had made a general finding that the intrastate rates theretofore in effect resulted in "unjust discrimination [fol. 214] against interstate commerce", but no findings were made upon the basic and essential facts underlying this ultimate fact. In setting aside the Commission's order because of the failure to make proper findings, the Supreme Court, in a decision by Chief Justice Hughes, said (p. 215):

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has recently adverted (*The Beaumont, Sour Lake & Western Railway Company v. United States*, 282 U. S. 74) but of the lack of the *basic or essential findings required to support the Commission's order*. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit. The Commission is the fact-finding body and the Court examines the evidence not to make the findings for the Commission but to ascertain whether its findings are properly supported."

Again, in the very recent case of *Saginaw Broadcasting Co. v. Federal Communications Commission*, 96 Fed. (2d) 554, decided on March 16, 1938 by the United States Court of Appeals for the District of Columbia, the court said (p. 559):

"The requirement that courts, and commissions acting in a quasi-judicial capacity, shall make findings of fact, is a means provided by Congress for guaranteeing that cases shall be decided according to the evidence and the law, rather than arbitrarily or from extralegal considerations; and findings of fact serve the additional purpose, where provisions for review are made, of apprising the parties and the reviewing tribunal of the factual basis of the action of the court or commission, so that the parties and the reviewing tribunal may determine whether the case has been decided according to the evidence and the law or, on the contrary, according to arbitrary or extra-

legal considerations. When a decision is accompanied by findings of fact, the reviewing court can decide whether the decision reached by the court or commission follows as a matter of law from the facts stated as its basis, also [fol. 215], whether the facts so stated have any substantial support in the evidence. In the absence of findings of fact the reviewing tribunal can determine neither of these things. The requirement of findings is thus far from a technicality. On the contrary, it is to insure against Star Chamber methods, to make certain that justice shall be administered according to facts and law. *This is fully as important in respect of commissions as it is in respect of courts.*"

Continuing, the court said (p. 560):

"Our conclusions on this topic are, we think, confirmed by the decisions of the Supreme Court which consider what findings of fact are necessary in reports of the Interstate Commerce Commission. Section 14 of the Interstate Commerce Act, 34 Stat. 589, 49 U. S. C. §14 (1934), requires only that the report of the Commission shall state its conclusions, unless damages are to be awarded. Nevertheless, *the Supreme Court has laid down the rule that, although under this section formal findings of fact are not required, substantial findings of the basic and essential facts necessary to support the order must appear.*"

To the same effect, see also the following cases cited by the United States Court of Appeals:

United States v. Baltimore & Ohio R. R., 293 U. S. 454, 465 (Chief Justice Hughes);

United States v. Chicago, M. & St. P. & P. R. R. Co., 294 U. S. 499, 510-11 (Justice Cardozo);

Kewanee & G. Ry. Co. v. Illinois Commerce Commission, 340 Ill. 266, 268-70; 172 N. E. 706, 708.

In its Decision herein, the court said (p. 381):

"The findings of fact, while not given numerical segregation, are stated with sufficient fullness in the opinion of the commission to apprise the parties and this court of all the facts supporting the commission's decision."

We submit that the court, in making this statement, fell into grievous error.

[fol. 216] The Commission's decision fails to make any of the following "basic or essential findings required to support the Commission's order" in a case involving the fixing of rates or tolls:

1. There is no finding as to the fair value of the property or the fair rate base;

2. While the order purports to establish a rate for 1938, there is no finding as to what revenue the rate established by the Commission will produce in 1938 or in any subsequent year;

3. There is no finding as to the reasonable amount of maintenance and operating expenses and taxes to be paid in 1938 or in any subsequent year;

4. There is no finding as to a reasonable and proper allowance for depreciation or amortization in 1938 or in any subsequent year;

5. There is no finding as to how many dollars will remain in 1938 or in any subsequent year for return on the fair value of the property;

6. There is nothing whatever in the decision to show that the rates established by the Commission will yield even a return of 7.5 per cent on the fair value of the property. The entire matter is left to speculation and conjecture and this court is called upon by the Commission to do the fact-finding work which it was the Commission's duty to do.

[fol. 217] The court, in its Decision, does not even attempt to point out the Commission's finding as to a single one of the above "basic or essential findings" except only that the court makes the following unsupported statement on the subject of the rate base (p. 377):

"After consideration of all the figures presented, the commission adopted the reported original cost, namely, \$7,949,954, as the reasonable rate base."

There is nothing in the Commission's opinion to justify that statement. The Commission does not once even mention such a thing as a "rate base" and at no point does it make a finding that \$7,949,954 or any other sum is a reasonable rate base.

In fact, the Commission's brief herein makes the following statement, which is directly contrary to the court's above statement (Brief, p. 91):

*"The Commission in its opinion did not make an exact finding of value."*

Said figure of \$7,949,954 is merely a figure used by the attorneys for the Commission in their brief and does not represent any finding of fact made by the Commission.

There is not even a pretext that the Commission made any finding of fact as to any one of the other "basic or essential findings" hereinabove listed and required to support the Commission's decision.

We submit that because of the Commission's failure to make the basic and essential findings of fact required to support its order and decision, a rehearing should be [fol. 218] granted and the Commission's order thereupon set aside.

9. Considering the Carquinez Bridge alone, the court erred in holding that the rates fixed by the Railroad Commission will not confiscate petitioner's property in that bridge.

a. Wasting Asset. The Court, while conceding that this is a case of a "wasting asset", erred in failing to carry to their logical conclusion the principles applicable to such a situation.

At page 376 of its Decision, this court said:

*"The opinion and order of the commission is dated February 8, 1938. It indicates that the commission was well aware of and considered the fact that the life of the franchise and the control of the properties will terminate in 1948 without compensation to the franchise holder, and that the operating properties must therefore be treated as a 'wasting asset'."*

This is the first case of a public utility "wasting asset" to come before this court.

The witnesses for the Railroad Commission and the petitioner agreed as to the definition and the characteristics of such "wasting asset".

Mr. Coleman, one of the Commission's financial experts, testified as follows (Tr. 303-4):

"Q. (by Mr. Thelen): Now when Mr. Rowell asked you that question, referring to a wasting asset, please state



whether you understood that term, as applied to the facts [fol. 219] in this case, to mean that the investment from the beginning is to be treated as a wasting asset and is to be returned with fair interest or dividends by the time the franchise expires?

"A. (by Mr. Coleman): I think that is correct. I have considered that here was an asset whose value would cease on a certain known date.

"Q. And by that date, of course, it would be necessary to have the investment returned?

"A. That is right.

"Q. And in the meantime, those who made the investment would naturally expect to receive reasonable interest, if it were bonds, and reasonable dividends if it were stock?

"A. I presume that would be the reason they would make the investment."

Mr. J. W. Haines, a partner in Haskins & Sells, a witness called by petitioner, testified that

"the logical application of that theory (i. e., wasting asset theory) requires the return of the investment during the life of the asset, plus a fair interest and/or dividend on that portion of the investment which, from time to time, has not as yet been returned." (Tr. 670.)

Attached to the Petition for Rehearing before the Railroad Commission, as Exhibit A, is a statement entitled "Estimated Operating Results—American Toll Bridge Company—1938-1948—Under Rates as per C. R. C. Decision". This exhibit shows whether or not the rate fixed in the Commission's decision will enable petitioner to meet the requirements of its "wasting asset".

The Commission's subsequent brief does not in any way challenge the accuracy of the figures shown in said exhibit and they must be accepted on the record in this case to be, as they actually are, correct.

[fol. 220] The exhibit shows that at the end of the franchise period in 1948, the revenues from the rates now fixed by the Commission will have failed to retire 437,167 shares of stock of the par value of \$1.00 per share.

The exhibit further shows that said revenues will have failed to apply as much as a single dollar on the \$2,404,600.00 of dividends at 8% which the Company failed to earn and

declare during the period from May 21, 1927 to December 31, 1935. Said figure of \$2,404,600.00 includes nothing whatever for interest.

Finally, the exhibit shows unretired capital stock at \$1.00 per share plus unpaid dividends, at the end of the franchise period, totalling \$2,841,767.00.

It thus appears that under the tolls fixed by the Commission, petitioner will fail by a large sum to earn the revenue to which its "wasting asset" is entitled, to the end that petitioner's just obligations to its bondholders and stockholders may be met.

It likewise appears that the court committed serious error in failing to follow the record to its conclusion and in failing to find that the Commission's decision did not accord to petitioner's property its fair and just rights as a wasting asset.

[fol. 221] b. Even if the case be considered not as one of a wasting asset, but as the usual case of fixing the rates to be charged by a public utility, under the usual rate-making principles, the court made numerous errors in its statements of fact and its conclusions and erred in holding that the rates fixed by the Railroad Commission would not confiscate petitioner's property in the Carquinez Bridge.

We regret to be obliged to advise the court that that portion of its Decision which refers to the issue of confiscation as related to the Carquinez Bridge is replete with serious misstatements of fact and erroneous conclusions. These errors are so numerous and so grave that they alone, in our opinion, require that a rehearing be granted. Among these errors are the following:

(1) The court erred in its statement that "in fixing the tolls for the traffic over Carquinez Bridge consideration was given to the effect of such rates on the company as a whole" (Decision p. 376).

While the Commission's opinion states that consideration will be given to the effect on the company as a whole, we can find nothing in the Commission's decision showing that such consideration was actually given. The Commission's decision contains no figures and no findings of fact to justify [fol. 222] such a conclusion. On the contrary, the Commission expressly refused to consider the Antioch Bridge or the effect of the tolls on the traffic over that bridge.

(2) The court erred in stating that the issue of \$4,300,000 of refunding bonds included "the expenses of the call and reissue". (Decision, p. 376.)

The record shows that said issue of bonds yielded gross cash of only \$4,149,500: (Exh. 1, p. 18—Coleman.)

The cash requirements in connection with said issue were as follows (Exh. 1, p. 18—Coleman):

Face value of called bonds	\$4,180,500
Premiums on calling said bonds	131,300
Expenses incident to new issue	43,527.70
	<hr/>
	\$4,355,327.70

Obviously, obligations totalling \$4,355,327.70 can not be met by the payment of only \$4,149,500.00.

(3) The court erred in the statement that the principal amount of the refunding bonds "was reduced to \$2,491,500 by October 31, 1937". (Decision, p. 376.)

The record shows that the bonds still outstanding on October 31, 1937 were more than \$1,000,000 in excess of the amount stated by the court. (Exh. 21, p. 2.)

[fol. 223] (4) In setting forth the figures in the record bearing on rate base (Decision, p. 377), the court erred in omitting the following figures:

Value of investment—January 1929 (Report of California Highway Commission entitled "Investigation and Report on Toll Bridges in the State of California," p. 67; see also Mitchell, Tr. 66) \$10,676,142.00

Net purchase price—October 20, 1932 (Report entitled "Report on Investigation of Carquinez Toll Bridge" transmitted by C. H. Purcell, State Highway Engineer, to Earl Lee Kelly, Director of Public Works, and by the latter to Governor Rolph, p. 38; see also Mitchell, Tr. 137) \$10,288,840.00

(5) The court erred in its statement "that after consideration of all the figures presented, the commission adopted the reported original cost, namely, \$7,949,954, as the reasonable rate base" (Decision, p. 377).

As we have already shown, the Commission's decision adopted no figure and made no finding whatever as to any figure which is the reasonable or any rate base. The Commission's brief admitted this to be the fact.

[fol. 224] (6) The court erred in stating that specified "percentages of net income had been earned by the company" in the years 1927-1937, inclusive (Decision, p. 377).

These figures related to the Carquinez Bridge alone after the Commission amputated the Antioch Bridge. Furthermore, the record shows, without any contradiction whatever, that the figures on which the percentages of alleged "net income" were computed were the lowest reliable figures in the record and that they were too low for use as a rate base because they included interest during construction on the bond money alone and also included no allowance for the value of the franchise of the Rodeo-Vallejo Ferry Company (Ready, Tr. 725-6). Also, the figures are too low for use as a rate base because they contain no allowance for the cost of developing the business or going concern value.

(7) The court erred in indicating that the petitioner had urged that "past deficits should be included in the computation of the base for toll regulating purposes" (Decision, p. 378).

The petitioner made no such claim. It is very rare that past deficits are included in the base for regulating rates. What the petitioner did claim was that in fixing tolls for its "wasting asset" the tolls should be fixed high enough so [fol. 225] as to enable petitioner to pay its bonds and retire its capital stock, with reasonable interest and dividends in the meantime, because it will lose the property without the payment to it of any compensation whatever upon the expiration of the franchise in 1948.

(8) The court erred seriously in the following statement (Decision, p. 378):

"The petitioner does not dispute the reasonableness in adopting the reported original cost as a rate base. \* \* \*

This statement is absolutely without warrant and we ask that it be withdrawn, on rehearing.

In the event that the Commission had applied the wasting asset theory fairly and logically and consistently up to 1948, so that petitioner could have met fully its obligations to its bondholders and its stockholders, petitioner would have been willing to use as a base for the computations the reasonable original cost as corrected in its briefs.

But that is a far cry from asserting that such figure would be the fair value of the property or would be a just and reasonable figure to use as a rate base in a case which fails to apply the wasting asset theory but undertakes to proceed along the conventional valuation and rate-fixing lines. The original cost is by far the lowest valuation figure in the record entitled to consideration and is utterly inadequate as a rate base in the usual case of fixing the rates to be charged by a public utility under the usual rate-making principles.

[fol. 226] While we have at times used the reasonable original cost in the computations in our briefs, the figure has been very definitely designated as merely a "minimum" figure and for the purpose of showing the confiscatory character of the Commission's tolls even when applied to the very lowest valuation figure in the record.

There is no warrant whatever for the court's statement that "petitioner does not dispute the reasonableness in adopting the reported original cost as a rate base."

The fact is directly to the contrary.

(9) The court erred in failing to find that the amount to be included in reasonable original cost for the item of interest during construction is the sum of \$1,070,761.00, instead of only \$688,892.56 (Decision, p. 378).

The Commission's own expert, Mitchell, testified that said sum of \$688,092.56 is too low in the sum of \$415,541.44 and that the correct amount should be \$1,103,634.00 (Mitchell, Tr. 241-2; Exh. 16, pp. 15, 19, col. 2—Mitchell).

Mr. Ready reported the somewhat lower figure of \$1,070,761.00 (Exh. 117, p. 27, col. 2) which lower figure petitioner is willing to accept.

The Commission's use of the figure of \$688,092.56 is directly contrary to the only testimony on the subject in the record. It is contrary to the testimony not only of petitioner's very fair and able witness, Mr. Ready, but also to



[fol. 227] the testimony of the Commission's own sole witness on that subject.

The Commission's treatment of the matter, furthermore, is contrary to the practice theretofore uniformly pursued by the Commission. Thus, in Application of City of San Diego for order establishing rates to be charged for water, 4 C. R. C. 902, the California Commission said (p. 915):

"Considerable attention was given at the hearing to the question of interest during construction. It appears that the amount shown for interest on the books of the Southern California Mountain Water Company represents only interest on borrowed money and that no entry appears on the books to represent interest on money secured through other means, such as the sale of stock. *It is, of course, clear that interest during construction should be allowed on all moneys, from whatever source secured, which were spent for capital account during a reasonable construction period.*"

The Decision herein cites no case whatever in support of the court's conclusion. We submit that in the light of the testimony in this case, as well as in accordance with the Commission's own prior policy, Mr. Ready's said figure of \$1,070,761.00 is the minimum allowance which should have been made for the item of interest during construction, under the head of reasonable original cost of the Carquinez Bridge.

(10) The court erred in holding that no allowance whatever need be made for the cost of developing the business or going concern value (Decision, pp. 378-80):

The Commission's decision shows affirmatively that the [fol. 228] Commission made no allowance whatever for the cost of developing the business or going concern value. The court's Decision states that the Commission "allowed all that could be required of it"—which allowance was just nothing.

This holding is directly contrary to a long line of decisions of the Supreme Court of the United States, among the most recent of which is *McCardle v. Indianapolis Water Co.*, 272 U. S. 400. At page 414, the court said:

"The decisions of this court declare: 'That there is an element of value in an assembled and established plant,

doing business and earning money, over one not thus advanced; is self-evident. This element of value is a property right, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use.' *Des Moines Gas Co. v. Des Moines*, 238 U. S. 153, 165; *Denver v. Denver Union Water Co.*, 246 U. S. 178, 191, 192. And see *National Waterworks Co. v. Kansas City*, 62 Fed. 853, 865; *Omaha v. Omaha Water Co.*, 218 U. S. 180, 202, 203, and cases cited."

In reaching its conclusion herein (Decision, p. 379), the court relied on *Los Angeles Gas & Electric Corporation v. Railroad Commission of California*, 289 U. S. 287. However, an examination of that case shows that it is authority for the petitioner herein and does not support the conclusion of the court herein.

At page 313, the Supreme Court of the United States in the *Los Angeles Gas & Electric Corporation* case refers with approval to the long line of decisions of the Supreme Court relied upon by petitioner herein and showing the [for 229] necessity of making allowance for the item of cost of developing the business or going concern value.

The court in that case found that the Railroad Commission did find a rate base which was sufficiently high to include an allowance of \$5,500,000 for the item of going concern value. With reference to said sum, the court says:

"that 'the entire excess (of \$5,500,000.00) may be regarded as applicable to whatever tangible value the property had as a going concern' " (p. 317).

Continuing, the court said:

"The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element."

The allowance of \$5,500,000.00 for going concern value constituted 8.4 per cent of the Commission's rate base of \$65,500,000.00 (p. 319). On the other hand, the allowance of \$300,000.00 claimed by petitioner in the present case is less than 5 per cent of the cost of reproducing new the physical property in the Carquinez Bridge.

That the amount claimed by petitioner herein is entirely reasonable is shown by the allowances found to be proper in a large number of decisions of the Federal Courts which petitioner set forth on pages 148-51 of its opening brief, to which the court is respectfully referred.

The cases of *Dayton Power & Light Co. v. Public Utilities Commission of Ohio*, 292 U. S. 290, and *Columbus Gas & Fuel Co. v. Public Utilities Commission of Ohio*, 292 U. S. 398, cited by the court herein (Decision, p. 379) are not at [fol. 230] all at variance with the general principle established by the long line of decisions of the Supreme Court of the United States, on which petitioner relies. In said two cases, it appeared affirmatively on their facts that the State Commission had given all required recognition to the element of going concern value "as a contributory factor in other elements of value" (*Dayton Power & Light Co. case*, 292 U. S. 290, 308) and that the going concern value "was reflected in the other items and particularly in the appraisal of the physical assets as part of an assembled whole" (*Columbus Gas & Fuel Co. case*, 292 U. S. 398, 411).

The situation in the present case is entirely different. The Commission here made no finding that it had given any consideration whatever to the element of going value and the decision shows affirmatively that no consideration was given to the matter.

This court undertakes to justify the Commission in giving no consideration to this element of value and in failing to make any allowance whatever for it.

In this, the Railroad Commission and the court committed clear error of law.

(11) The court erred in its statement that "the historical hazards and risks stressed by the petitioner were unquestionably taken into consideration by the commission and are reflected in the rate base adopted" (Decision, p. 380).

We respectfully suggest that this is merely an unsubstantial [fol. 231] surmise. There is nothing in the Commission's decision to show that as much as a single nickel was added to or included in "the rate base adopted" (assuming that the Commission did adopt some rate base) by reason of the very great hazards and risks which the record shows necessarily attended the construction of this notable pioneer enterprise.

(12) The court erred in the statement that "in computing the net annual receipts, allowances were made for depreciation reserves, including amortization of the entire investment before the expiration of the franchise period" (Decision p. 380).

The Commission made no findings as to any of these matters. Hence it is impossible to determine what the Commission did as to any of them.

Furthermore, the Commission was undertaking to fix tolls for 1938 and not for the entire remaining life of the property and it was not at all undertaking to amortize the entire investment.

In fact, Exhibit A, attached to the Petition for Rehearing before the Railroad Commission, shows very definitely that on evidence introduced by petitioner as to all the years to and including 1948 (which evidence was in no way challenged in the Commission's decision or in its brief) the tolls fixed by the Commission, assuming year by year the full amount of augmentation of business, would fail by \$2,841. [fol. 232] 767.00 to permit petitioner to pay its bonds, retire its stock at only \$1.00 per share, and pay reasonable interest and dividends.

(13) The court erred in drawing attention to possible increases in volume of traffic (Decision, p. 380) without at the same time drawing attention to the fact that Mr. Hunter (for the Commission) and Mr. Ready (for the petitioner) agreed that under a 50¢ toll the stimulation would be 13½% and that the final figures of both experts already include and account for any and all increases in the volume of the traffic.

On the record in this case, no further revenue can properly be added, by reason of further growth in the volume of traffic, to the figures already reported by the two engineers.

(14) The court erred in its statement that "it cannot be said that inadequate return has not been afforded to the petitioner" (Decision, p. 380).

As petitioner showed in its opening brief (pp. 134-183) and its closing brief (pp. 89-144), the tolls fixed by the Commission for the Carquinez Bridge, will yield a return

not in excess of 6.6% on the lowest possible base figure [fol. 233] entitled to consideration and to be found in the record. The return on the fair value of the property would be substantially less.

A return of only 6.6 per cent would be

—less than the return of 7.5 per cent which the Commission found that petitioner should receive;

—less than actual cost in 1938 of all the money in the project, determined without dispute to be 7.851 per cent (Exh. 129, p. 5—Ready);

—less than the cost of money in connection with the original bond issue of 1925, determined by Mr. Coleman and Mr. Ready to be 9.71 per cent (Exh. 1, p. 17—Coleman; Exh. 129, p. 1—Ready);

—less than the cost of money in connection with the refunding bond issue of 1935; determined to be 8.95 per cent (Exh. 129, p. 3—Ready);

—far less than would result from the Commission's usual policy of ascertaining the rate of return by applying a multiple to the cost of money; and

—substantially less than the rates of return which the [fol. 234] Federal courts have required to avoid confiscation even in the cases of well-established and prosperous utilities.

Such a return is clearly confiscatory.

(15) The court, while conceding that the historical cost of its money as claimed by petitioner is correct, erred in holding that petitioner is not entitled to a rate of return as great as such cost but must be limited to a return based on the cost of money in connection with the refunding bond issue of 1935 (Decision, p. 380).

The record shows the following costs of money to petitioner:

Cost of money in connection with the original bond issue of 1925, determined by Mr. Coleman and Mr. Ready to be 9.71 per cent (Exh. 1, p. 17—Coleman, Exh. 129, p. 1—Ready).



Cost of money in connection with the refunding bond issue of 1935, determined to be 8.95 per cent (Exh. 129, p. 3—Ready).

Cost of all the money used by petitioner in the construction of its works, including the moneys secured from all sources, both bonds and stock and depreciation reserve, [fol. 235] which for the year 1938 is 7.851 per cent (Exh. 129, p. 5—Ready).

If the court's theory that the rate of return is to be fixed on the basis of the cost of money in connection with the last refunding bond issue is to be accepted, then it inevitably follows that the tolls fixed by the Commission are confiscatory for the reason that the yield (even if the 7.5 per cent referred to by the Commission is correct) is substantially less than the actual cost of money in connection with said refunding bond issue, shown by the record to be 8.95 per cent (see, also, Petitioner's Closing Brief, pp. 127-131).

However, we respectfully submit that the court's theory is patently erroneous because

(a) The theory overlooks entirely the cost of money in connection with the original bond issue;

(b) The theory overlooks completely the cost of all money derived from the sale of capital stock and from other sources other than bonds;

(c) The theory looks solely to the cost of money in connection with the tag end of the last refunding bond issue, which is obviously wrong;

(d) The theory overlooks completely the Railroad Commission's own established policy of allowing a rate of [fol. 236] return somewhat in excess of the average cost of money to the utility;

(e) The theory overlooks completely the fact that a hazardous enterprise such as the Carquinez Bridge is entitled to a rate of return substantially greater than that allowed to the well established and stable public utilities of the State.

For a detailed development of the above points, with complete references to the testimony bearing thereon, the court is respectfully referred to petitioner's opening brief (pp. 166-183) and petitioner's closing brief (pp. 122-144).

(16) The court erred in holding that rates should be fixed on the basis of the Federal income taxes paid in a year other than that for which the tolls were being fixed (Decision, p. 380).

The problem in this rate case was to determine how many dollars petitioner would require to meet its obligations for the year 1938, being the year for which the Commission was fixing the tolls. Would the tolls established by the Commission be sufficient to enable the petitioner to meet those obligations in 1938 and still have remaining a sufficient sum to yield to it a fair return on the fair value of the property?

[fol. 237] This problem is to be solved, not by technical accounting rules or practices adopted in connection with entirely different matters, but by determining the number of dollars which the petitioner will require, in the year 1938, to meet the obligations with which it will be confronted in that year, including the payment in 1938 of Federal income tax necessarily determined on the 1937 income.

Mr. Ready so testified (Exh. 134, p. 2, 1938) and his testimony, in addition to being sound in principle, is the only testimony in the record as to what allowance for Federal income taxes must be included in computing the tolls for 1938. No witness for the Commission testified on that subject and there is not a word of testimony in the record contrary to that offered by Mr. Ready.

We respectfully submit that matters of this kind should be determined by the testimony in the record.

(17) The court erred in not entering judgment setting aside the order and decision of the Commission by reason of the failure of the Commission to make any of the basic and essential findings of fact as to the Carquinez Bridge which are required to support the Commission's order and decision.

These basic and essential findings have been set forth in an earlier portion of this petition, to which the court is respectfully referred. These are the basic and fundamental [fol. 238] matters as to which any administrative tribunal fixing rates to be charged by a public utility should make findings of fact. As to none of them did the Railroad Com-

10. The court erred in upholding the Railroad Commission's action in severing the Antioch Bridge from the remaining portion of petitioner's single, unified transportation system and in fixing rates for the Carquinez Bridge alone.

In connection with this point, we submit the following specifications of error, which, we believe, require that a rehearing be granted herein:

(1) The court erred in its statement that the Railroad Commission was justified in concluding that the Carquinez and the Antioch Bridges are not integrated into a single transportation system (Decision, p. 375).

In reaching this conclusion, the court not merely disregarded the uncontradicted testimony and exhibits to the contrary of the Commission's own witnesses (Exh. 1, p. 25—Coleman; Coleman, Tr. 290-1; Mitchell Tr. 144; Exh. 3, p. 2—Mitchell), but also found contrary to findings made by the State Highway Engineer and the Department of Public Works of the State of California before the present controversy arose.

[Vol. 239] The court's statement is at variance with the "Report on Investigation of Carquinez Toll Bridge" dated October 20, 1932, prepared by the State Highway Engineer and the Director of Public Works in which "attention is again directed to the fact that the American Toll Bridge Company owns and operates as one project, both the Carquinez and Antioch Toll Bridges" and that, therefore, it is "necessary to consider the future earnings of the two bridges in order to arrive at a reasonable price \* \* \* (Mitchell, Tr. 133).

The Railroad Commission's action and the court's statement are directly contrary to all the testimony on that subject.

(2) The court erred in its statement that the fact that the Carquinez and the Antioch Bridges are competitive justifies the Commission in excluding the Antioch Bridge (Decision, p. 375).

We submit that the very contrary is the fact.

The record shows, without any contradiction, that, as the Antioch Bridge serves substantially the same territory and

the same traffic as the Carquinez Bridge, the inevitable effect of the Commission's decision, if it stands, would be to force petitioner to reduce the Antioch Bridge tolls to the same level as the Carquinez Bridge tolls, thus reducing the gross and the net revenue of petitioner below the point to which the Commission could go without confiscation. The Com-[fol. 240] mission would thus accomplish indirectly what it could not accomplish directly.

It is because of this inevitable effect of the tolls of one bridge on the tolls of the other bridge, due to the competitive situation; that the problem must be considered as a whole. It is largely for this reason that the Railroad Commission should have dealt with the property as a whole and ascertained the fair value and reasonable operating, maintenance, depreciation and amortization expenses and a fair rate of return for both bridges.

(3) The court erred in its statement that the fact that neither bridge "is used or useful in any service performed by the other" justifies the Commission in excluding the Antioch Bridge (Decision, p. 375).

We respectfully submit that the fact whether either bridge is used or useful in any service performed by the other is not material in connection with the question whether tolls should be fixed for both bridges together or for the Carquinez Bridge alone.

No authority is cited establishing any such test.

The Commission itself has never, in so far as we can ascertain, applied any such test. Thus in *City of San Diego v. San Diego Consolidated Gas and Electric Company*, 37 C. R. C. 161, in a decision written by Commissioners Seavey and Carr, the Commission considered the company's electric business and its newly acquired natural gas business as a single business and fixed rates accordingly, even though it could not be said that the electric properties were being used or useful in the service being performed by the natural gas properties.

Again, in *Coney v. Broad River Power Co.*, 171 So. Car. 377, 172 S. E. 437, the court held that the Railroad Commission of South Carolina should have fixed rates on a consideration of the entire property, both the electric system and the street railway system, although neither of these systems was used or useful in the service performed by the other.

The electric system did not require the rails and ties of the street railway system nor were the street railway cars used or useful in any service performed by the electric system.

We submit that the test thus set down by the court in its Decision herein is an entirely false test, which is supported neither by reason nor by authority.

(4) The court erred in its statement that the fact that public utility rates have frequently been fixed for less than the public utility's entire property justifies the Commission in excluding the Antioch Bridge (Decision, p. 375).

The proposition that less than the entire property of a public utility is frequently fixed as the appropriate unit for rate making purposes is too well known to justify the citation of authority. Thus, it would be ridiculous to say that [fol. 242] in fixing the rate to be charged by Southern Pacific Company for the transportation of freight between two local points it would be necessary to ascertain the value of that Company's entire property.

However, the fact that in many instances rates are fixed for only a portion of a public utility's system is, in our opinion, no justification whatever for excluding from consideration a portion of a transportation system which is parallel with and almost adjacent to the portion for which rates are to be fixed and which, by reason of the competitive situation, will be immediately, directly and seriously affected by the rates established for the neighboring portion of the same transportation system.

In such a case, "the rudimentary requirements of fair play" as well as proper rate making principles, require that the problem be considered as a whole.

(5) The court erred in finding that petitioner purchased the Antioch Bridge for the purpose of reducing competition or purchased it at all (Decision, p. 375).

There is no warrant in the record for the statement that petitioner purchased the Antioch Bridge for the purpose of reducing competition or at all. The simple fact is that petitioner itself built both the Carquinez and the Antioch Bridges as parts of a single transportation enterprise (Exh. 1, pp. 1-2—Coleman).

[fol. 243] (6) The cases cited by the court do not sustain its conclusion as to the Antioch Bridge (Decision, p. 375).



The court cites *Wabash Electric Co. v. Young*, 287 U. S. 488, *Gilchrist v. Interborough Rapid Transit Company*, 279 U. S. 159, and *International Railway Co. v. Prendergast*, 1 Fed. Supp. 623, but none of these cases support the court's conclusion.

In the *Wabash Electric Co.* case, the electric system in the City of Martinsville, Indiana, had always been treated by all parties as a separate unit of a larger system, for rate making purposes. The Indiana Commission was, of course, justified in continuing to treat it as such separate unit. Furthermore, there was here no competitive feature whatever between different portions of a single, unified public utility system.

In the *Gilchrist* case, the elevated and the subway operations of the street railway system had always been kept financially distinct; also the owner of the system had itself treated them separately for rate making purposes and had filed with the Transit Commission an application for a 5¢ fare on the subways alone, without asking any relief at that time as to the elevated lines (p. 206). On this state of the record, the Supreme Court properly pointed out that "the two systems have been treated as separate and upon this record must be so regarded" (pp. 209-10). This case, accordingly, cannot properly be cited in support of the court's conclusion herein.

In the *International Railway Co.* case, the question at issue was whether or not the street railway fares in the City [fol. 244] of Buffalo were confiscatory. The Company urged that the Public Service Commission should have included in the rate base street railway systems in other cities and two international bridges across Niagara Falls. The court very properly pointed out that with the acquiescence of the Company the Public Service Commission had theretofore treated the Buffalo street railway portion of the system as a separate unit of operation. Quite naturally, the Company's position was held to be untenable.

The case is, of course, entirely different on its facts from that now before this court. There was no showing of any competitive situation between the street railway system in Buffalo and the Company's other properties. Nor did the street railway properties in the other cities or the two international bridges serve the same territory or any part thereof as the street railway system in the City of Buffalo. The *International Railway Co.* case was not a case in which

the reduction of the rates of a public utility on one part of its system would have the inevitable effect, by reason of the play of competitive forces, of compelling the public utility to make a similar reduction in the rates on a parallel portion of a single, unified transportation system.

(7) The court erred in its analysis of *Coney v. Broad River Power Company*, 171 S. C. 377, 172 S. E. 437.

At page 376 of its Decision, the court refers to — *Coney* case as follows:

[fol. 245] "The condition existing in this case, namely, that neither the Carquinez bridge nor the Antioch bridge is to any degree used or useful in the public utility service and operation of the other, distinguishes it from the case of *Coney v. Broad River Power Company*, 171 S. C. 377, 172 S. E. 437, relied upon by the petitioner. There the decision was that the commission in computing a rate base for tolls to be charged by the power company for furnishing electric energy, could not exclude from consideration the properties of the street railway system owned and operated by it. But that conclusion specifically depended on the fact there appearing that the functions were related and that *all the properties were used or useful in the company's business of generating electricity and in its related business.*"

We respectfully submit that the court's analysis of the *Coney* case is not correct. The question at issue was whether the Railroad Commission of South Carolina, in fixing rates to be charged by Broad River Power Company, could consider its power system separately, or whether it must also include the Company's street railway system. The court found that the Commission should consider all the properties as a single system and fix the rates accordingly.

But the court did not find that "*all the properties were used or useful in the company's business of generating electricity and in its related business*".

How could any court find that all the property of a public utility power system is used and useful in the operation of a street railway system or that all the rails, ties and cars of a street railway system, are used and useful in the operation of a power company?

Such things simply do not happen.

[fol. 246] There is nothing in the Coney case which justified the court's conclusion that the Railroad Commission could exclude the Antioch Bridge because that bridge is not used in the operation of the Carquinez Bridge. As we have already shown, this is a false test which is not sustained by either reason or authority.

(8) The court erred in making the statement that the extent to which "the single ownership of such competing units subserves the public welfare and protects the correlative rights and interests of the franchise holders and the public is a question primarily for the commission to decide" (Decision, p. 376).

We respectfully draw the court's attention to the fact that the Railroad Commission never has had and does not now have any such responsibility or authority.

The Carquinez and the Antioch Bridges were constructed long before the Railroad Commission had any authority of any kind over toll bridges. The questions of public policy with reference to those bridges were decided by other agencies of the State.

Furthermore, the Railroad Commission does not at this time have any authority or responsibility whatever to determine whether or not the single ownership of the Carquinez and the Antioch Bridges does or does not serve the public welfare.

[fol. 247] (9) The court erred in making the statement that "the petitioner is not entitled to have the investment and operating expense of both bridges included in the rate base upon which to compute a toll for Carquinez bridge" (Decision, p. 376).

Petitioner has never claimed the right to include the operating expenses of either or both the bridges in the rate base. Petitioner has never heard of a case in which it has been held that operating expenses can be included in a rate base.

Furthermore, petitioner has never claimed that either the investment or the operating expenses of both bridges should be included in the rate base upon which to compute a toll for the Carquinez Bridge alone.

What petitioner has contended and still contends is that the Commission should not have excluded the Antioch

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Bridge but should have fixed the tolls to be charged by both bridges and that in doing so, it should have considered and made definite findings as to valuation, operating expenses, depreciation, amortization, gross revenue, net revenue and rate of return as to both bridges.

As petitioner has never made the claims attributed to it by the court, we believe that the above statement should, on rehearing, be eliminated from the Decision.

[fol. 248] (10) The court erred in failing to find that the Commission's exclusion of the Antioch Bridge was unfair and arbitrary and deprives petitioner of its property without due process of law in violation of the guarantees of the State and Federal Constitutions.

That the exclusion of the Antioch Bridge, so as to enable the Commission to cut the tolls of the Carquinez Bridge deeper than otherwise would have been the case, relying then on the force of competition to pull the tolls of the Antioch Bridge down to those thus fixed for the Carquinez Bridge, was action denying to petitioner "the rudimentary requirements of fair play" would seem to be too clear to require any argument.

This point, together with the decisions of the Supreme Court of the United States on which we rely in this connection, are fully set forth in petitioner's opening brief (pp. 131-133) and petitioner's closing brief (pp. 144-151), to which the court is respectfully referred.

11. The court erred in failing to hold that the Railroad Commission's decision would confiscate petitioner's property in both the Carquinez and the Antioch Bridges.

In petitioner's opening brief, petitioner showed that a minimum fair value of the Carquinez and the Antioch Bridges together is \$10,780,411 (pp. 183-4); that the tolls [fol. 249] fixed by the Commission would yield a net income available for return on such rate base for both bridges, of \$606,320 (pp. 185-8); and that the rate of return thus made available would be only 5.6 per cent (pp. 187-8).

The Commission's brief did not in any way challenge petitioner's figures as to the Antioch Bridge, either as to fair value, operating revenues, operating expenses or amount remaining for fair return on fair value. These figures were prepared by the same witnesses—principally



Mr. Ready—in the same manner and in accordance with the same principles as were used in the preparation of the similar figures as to the Carquinez Bridge. On the record herein, they must be accepted as correct.

On these conceded figures as to the Antioch Bridge plus the demonstrated figures as to the Carquinez Bridge hereinbefore set forth, it follows, on the record in this case, that the tolls established by the Commission would yield a return of only 5.6 per cent on a minimum fair value of both bridges.

A return of only 5.6% on both bridges together would be—

(1)  $7.5\% - 5.6\% = 1.9\%$  below the rate of return which the Commission found would be reasonable for the Company;

(2)  $9.07\% - 5.6\% = 3.46\%$  below the cost of bond money [fol. 250] actually used in the construction of the Company's bridges; and

(3)  $8.95\% - 5.6\% = 3.35\%$  below the cost of money resulting from the bond refunding operation of 1935.

We believe it to be too clear for further discussion that the Commission's tolls will, if permitted to become effective, confiscate the transportation system of American Toll Bridge Company, consisting of the Carquinez and the Antioch Bridges, and violate the Company's rights under Section 1 of Article XIV of the Amendments to the Constitution of the United States and under Sections 13 and 14 of Article I of the Constitution of California.

### III

#### Procedure Before Railroad Commission—Denial of Due Process of Law

12. The court erred in its interpretation of the decision of the Supreme Court of the United States rendered on April 25, 1938 in *Morgan v. United States*, 304 U. S. 1.

American Toll Bridge Company has heretofore challenged and does now again specifically challenge the validity of the Railroad Commission's decision and order on the express ground that said decision and order and the entire proceedings had in connection therewith constitute a denial

[fol. 251] to petitioner of due process of law in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States and Sections 13 and 14 of Article I of the Constitution of California.

In *Morgan v. United States*, 304 U. S. 1, decided on April 25, 1938, the question at issue related to the validity of an order of the Secretary of Agriculture fixing the rates to be charged by market agencies at the Kansas City stock yards. The question arose under the Packers and Stockyards Act, 1921, 42 Stat. 159, 7 U. S. C. A., sec. 181-229.

In holding that the requirements of due process of law had not been met, the court pointed out that "in administrative proceedings of a quasi-judicial character, the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play" (pp. 14-15).

At page 18, Chief Justice Hughes states the real point of the case as follows:

*"Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command."*

The Chief Justice then examined the procedure before the Secretary of Agriculture in order to determine whether or not the appellants "in their contest with the Government in a quasi-judicial proceeding aimed at the control of their activities" had or had not been "fairly advised of what the Government proposes" and whether or not they had been "heard upon its proposals before it issues [fol. 252] its final command".

"As bearing on said questions, which constituted the real issue in the case, the court naturally addressed itself primarily to the question whether or not the issues had been properly defined. That would be the normal and usual way of advising "what the Government proposes".

In pursuing its inquiry, the court found (p. 19):

(1) The proceeding was initiated by a mere notice of inquiry into the reasonableness of appellant's rates;

(2) No formal complaint was formulated;

(3) There was no report by an examiner and no proposed findings were served by the Government;

(4) While there was oral argument, counsel for the Government did not adequately state the Government's claims; and

(5) The Government did not file a brief.

Based upon that analysis of the facts, the court concluded that appellants had not been advised of what the Government proposed and had been denied due process of law (p. 19).

At page 20, the court stresses the point that in all substantial respects the Government was prosecuting the proceeding and that "the proceeding had all the elements of contested litigation, with the Government and its counsel on the one side and the appellants and their counsel on [fol. 253] the other". In such a proceeding, says the court, the appellants are entitled

"to have a reasonable opportunity to know the claims advanced against them" (p. 21).

At page 22, the court concluded:

"The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, *they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.*"

We submit, very respectfully, that in its Decision in the present case, this court entirely missed the point of the Morgan case.

While the findings made by the Secretary of Agriculture were numerous and some of them elaborate, there is nothing in the case to indicate that these facts, which were referred to by this court (Decision, p. 381) had any particular bearing on the decision.

While it is true, as further pointed out by the court herein, that mere lack of opportunity to examine and object to proposed findings before the decision is rendered does

not in and of itself show lack of due process of law. (Decision, p. 381) it is also true that where, in a proceeding of this kind instituted by the Government, there was no complaint, brief or argument on behalf of the Government [fol. 254] which informed the ordered party of the contentions on which the order sought to be made was to be based, the court will look further to see whether the essential information was given to said party in proposed findings served on him by the Government or in some other way. (National Labor Relations Board v. Biles Coleman Lumber Co., 98 Fed. (2d) 16, 18—Denman, Circuit Judge).

This court, in its reference to the Morgan case, entirely missed the point of the case, which was that in a quasi-judicial proceeding instituted by the Government against a public utility it is the duty of the Government, by the usual framing of issues by pleadings or otherwise to advise the party against whom the Government is proceeding "of what the Government proposes" and to give him a fair opportunity "to be heard upon its proposals before it issues its final command".

On May 16, 1938, the Supreme Court of the United States decided the case of National Labor Relations Board v. Mackay Radio & Telegraph Co., 304 U. S. 333.

The rules of the National Labor Relations Board provide that formal proceedings are instituted through the filing and service by the Board of a formal complaint, to which is attached a copy of the charge. The respondent then files a formal answer (Rules and Regulations, National Labor Relations Board, Series 1, as amended, Article II, Sections 5-10). From the court's decision, it appears that in the Mackay case this procedure had been followed. The Board had filed a formal complaint, to which the respondent [fol. 255] had filed a formal answer. After the completion of its testimony, the Board filed an amendment to the complaint. The respondent filed a general denial to the amended complaint and presented its evidence (p. 340). It thus appears that there is no possible question but what the issues were formulated by formal complaint and answer. The court also specifically pointed out that oral argument was had and that respondent filed a brief (p. 340).

On the question of procedure, the Mackay Company claimed that there was a "variance" between the issues as established by formal complaint and answer and some

finding or findings of the Board and the company claimed that if it had been served with proposed findings it could have pointed out the variance. That was the Company's only complaint on any question of procedure before the Board.

Referring to this contention, the court said (p. 349):

*"The position is highly technical.—All parties to the proceeding knew from the outset that the thing complained of was discrimination against certain men by reason of their alleged union activities."*

The court further said that "it appears that oral argument was had and a brief filed with the Board after which it made its findings of fact and conclusions of law", held that there was no merit in "the alleged fatal variance between the allegations of the complaint and the Board's findings" and concluded as follows (p. 350):

[col. 256] "What we have said sufficiently indicates that the issues and contentions of the parties were clearly defined and as no other detriment or disadvantage is claimed to have ensued from the Board's procedure the matter is not one calling for a reversal of the order. The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights. Compare *Morgan v. United States*, 298 U. S. 468, 478. The contention that the respondent was denied a full and adequate hearing must be rejected."

It thus appears that the decision in the Mackay case is in complete harmony with the decision in the Morgan case and with the position of petitioner herein.

On May 31, 1938, the Supreme Court rendered and filed its decision on the petition of the Government for a rehearing in the Morgan case (304 U. S. 23-26). The court again emphasized the crux of its decision in the Morgan case by restating the language hereinbefore quoted by us, as follows (p. 25):

"We said:

"Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what



the Government proposes and to be heard upon its proposals before it issues its final command.

'No such reasonable opportunity was accorded appellants. . . .'

13. The court erred in failing to hold that the facts of the present case on the issue of the procedure before the Railroad Commission fall squarely within the decision in the Morgan case.

Here, as in the Morgan case, petitioner was brought into [fol. 257] contest with the Government (the State) in a quasi-judicial proceeding aimed at the control of petitioner's activities.

Here, as there, the Government prosecuted the proceeding. Here, as there, the proceeding had all the elements of contested litigation, with the Government and its counsel on the one side and petitioner and its counsel on the other.

In examining the facts to ascertain whether petitioner was fairly advised of what the Government proposes, what do we find?

(1) Here, as in the Morgan case, the proceeding was initiated by a mere order or notice of inquiry. Copy of the document is attached to the Petition for the Writ herein as Exhibit "B". Said document merely provides for an investigation into "the rates, charges, contracts, classifications, rules and regulations" of petitioner in the operation of the Carquinez Bridge. Where, among all these matters, the lightning would strike, or what the State's proposals were, petitioner, at no time prior to the decision, had any means of knowing.

(2) Here, as in the Morgan case, no complaint was ever filed and under the Commission's procedure none was required.

(3) Here, as in the Morgan case, no answer was ever filed and no issues were ever framed by any pleadings.

[fol. 258] (4) Here, as in the Morgan case, the State at no time prior to the decision, ever advised petitioner of what it proposed to do, by means of proposed findings or by any other means.

(5) Here, as in the Morgan case, the State did not make known what it proposed, by any oral argument or by any brief setting forth such proposals.

The following language from the Morgan case applies exactly to the present situation (p. 19):

"And the appellants (petitioner) had no further information of the Government's (State's) concrete claims until they were served with the Secretary's (Railroad Commission's) order."

We submit that in the present case the court committed seriously prejudicial error by not finding that, on the issue of the procedure before the Railroad Commission, the facts of the present case fall squarely within the decision in the Morgan case.

Petitioner also objects strenuously to the following statement contained in the Decision herein (p. 381):

*"It is not contended that the petitioner was not fairly informed of what the issues were to be or that the issues were not clearly defined and understood by all parties concerned during the course of the hearing."*

We do not understand how the court could make such a statement. It is absolutely contrary to the facts. Petitioner has contended, most earnestly, and does now contend [fol. 259] that it was not informed, fairly or at all, of what the issues were to be; also that the issues were not defined, clearly or at all; also that there were no issues and hence petitioner did not understand and could not have understood what they were at any time prior to the Railroad Commission's decision.

The court's statement puts petitioner into an entirely false position. The statement is not warranted by anything which petitioner has at any time said or done.

We respectfully ask that on rehearing said entire sentence be eliminated from the Decision.

14. The court erred in holding that the procedure before the Railroad Commission did not deny to petitioner due process of law.

Petitioner earnestly urges that the procedure and the acts of the Railroad Commission constituted a denial to it of due process of law in violation of Section I of Article XIV of the Amendments to the Constitution of the United

States and Sections 13 and 14 of Article I of the Constitution of California for each of the following reasons:

(1) The procedure before the Railroad Commission denied to petitioner the due process of law to which it is entitled under the principles established by the Supreme Court of the United States and most recently announced in [fol. 260] *Morgan v. United States*, 304 U. S. 1;

(2) The acts of the Railroad Commission in excluding the Antioch Bridge and the circumstances of such exclusion were unfair, unjust and arbitrary and constituted a denial to petitioner of due process of law;

(3) The failure of the Railroad Commission to make findings of fact on the basic and essential facts necessary to support the order makes it very much more difficult for petitioner to protect its rights in subsequent proceedings and constitutes a denial of due process, in addition to making the task of the reviewing courts, State and Federal, unfairly and unreasonably difficult.

The court clearly erred in holding that petitioner has not been denied due process (Decision, p. 381). We urge that a proper holding would be that in each of the above respects petitioner has been denied the due process of law which is guaranteed to it by both the State and the Federal Constitutions.

#### Conclusion

We realize fully that the time of this court for the consideration of this petition is limited and regret the necessity of addressing ourselves to so many points. Our justification must be found in the grave importance to this petition of the questions here at issue.

It is our sincere conviction that the judgment in this case is in many important respects erroneous and that the large number and the importance of the points raised fully justify the granting of the petition for rehearing.

It is for these reasons that we respectfully appeal to this Honorable Court for reconsideration of the matters set forth in this petition and that on rehearing the judgment be reversed and the Railroad Commission's order annulled.

Dated at San Francisco, California, this 17th day of October, 1938.

Respectfully submitted, Thelen & Marrin, by Max Thelen; Dunn, White & Aiken, by B. R. Aiken and Bauer E. Kramer; Breed, Burpee & Robinson, by Harold C. Holmes, Jr., Attorneys for American Toll Bridge Company, Petitioner.

[fol. 262] Service of this within Petition for Rehearing and receipt of copy thereof is hereby admitted this 17th day of October, 1938.

Ira H. Rowell, Rodwick M. Cassidy, George E. Howard, Attorneys for Respondent.

[fol. 263] Railroad Commission of the State of California  
Fifth Floor California State Building, Civic Center, San Francisco, Cal.

October 21, 1938.

William H. Waste, Chief Justice, Supreme Court of the State of California, State Building, San Francisco, California.

American Toll Bridge Company vs. Railroad Commission.  
S. F. No. 16006

DEAR SIR:

A petition for rehearing of the above cause was filed by American Toll Bridge Company on October 17, 1938. Inasmuch as the respondent Commission reads the many assignments of error contained in such petition to be merely restatements of points already wholly presented and considered, the Commission will waive the privilege accorded by Rules of Court to make reply thereto.

Respectfully, Ira H. Rowell, Attorney for Railroad Commission of the State of California.

Rec'd Oct. 24, 1938.

Copy to Thelen & Marrin, Balfour Building, San Francisco, California.

IHR/GEH.

[fol. 264] IN SUPREME COURT OF CALIFORNIA, IN BANK

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed October  
27, 1938

By the COURT:

The Petition for a rehearing herein is denied.

Waste, Chief Justice.

Dated October 27, 1938.

[File endorsement omitted.]

[fol. 265] IN SUPREME COURT OF CALIFORNIA, BANK

San Francisco, No. 16006

AMERICAN TOLL BRIDGE COMPANY (a Corp.), Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Wallace  
L. Ware, Frank R. Devlin, Ray L. Riley, Ray C. Wake-  
field and Leon O. Whitsell, as Members of and Consti-  
tuting the Railroad Commission of the State of California,  
Respondents

On Review from the Railroad Commission of the State of  
California

#### REMITTITUR

The above entitled matter having been heretofore fully  
argued, and submitted and taken under advisement, and all  
and singular the law and premises having been fully con-  
sidered,

It is Ordered, Adjudged and Decreed by the Court that  
the Order of the Railroad Commission of the State of Cali-  
fornia in the above entitled cause, be and the same is hereby  
affirmed. The order of this court directing a stay pending  
determination in this proceeding is discharged.

I, B. Grant Taylor, Clerk of the Supreme Court of the  
State of California, do hereby certify that the foregoing is



a true copy of an original judgment entered in the above entitled cause on the 27th day of September, 1938, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 28th day of October, A. D. 1938.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy.  
(Seal.)

11498.

[fol. 266] [File endorsement omitted]

[fol. 267] SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER  
FOR REVERSAL—Filed October 28, 1938

### Petition for Appeal

To the Honorable, William H. Waste, Chief Justice of the  
Supreme Court of the State of California:

Comes now American Toll Bridge Company, a California corporation, appellant in the above entitled cause, by its attorneys, and respectfully shows that:

On the 27th day of September, 1938, in the above entitled cause, the Supreme Court of the State California, the highest Court of said State in which a decision in said cause could be heard, rendered a certain judgment against [fol. 268] said appellant and in favor of said appellees, affirming that certain order of the Railroad Commission of the State of California rendered on the 8th day of February, 1938, designated as Decision No. 30,612, in which order said Railroad Commission fixed the tolls to be charged by said appellant for the transportation of passengers, on foot or in vehicles, and of automobiles, over its so-called Carquinez Bridge across the Straits of Carquinez between the Counties of Contra Costa and Solano, in the State of California.

On the 17th day of October, 1938, said appellant filed with the Supreme Court of the State of California its Petition

for rehearing, which Petition was denied by said Court on the 27th day of October, 1938. Said judgment of said Court of September 27, 1938, became operative and final on the 27th day of October, 1938.

In the record and proceedings and in the rendition of said judgment of September 27, 1938, and in permitting the same to become final, manifest error occurred greatly to appellant's damage, whereby appellant feels aggrieved and does hereby appeal from said judgment to the Supreme Court of the United States.

In the record and proceedings and in the rendition of said judgment there was drawn in question by appellant herein the validity of said order of the Railroad Commission of the State of California, which said order was made [fol. 269] and entered by the Railroad Commission under Sections 22 and 23 of Article XII of the Constitution of the State of California and under that certain Act of the Legislature of the State of California known and designated as the "Public Utilities Act", Statutes 1915, chapter 91, page 115, as amended by the Act of July 1, 1937, Statutes 1937, chapter 896, page 2473, on the ground that said order was in contravention of, and repugnant to, various specified provisions of the Constitution of the United States, and the judgment of said Court was in favor of the validity of said order.

In said proceedings there was drawn in question the construction and application of two several clauses of the Constitution of the United States, namely, the clause of Section 10 of Article I of the Constitution of the United States which prohibits the State of California from passing any law impairing the obligation of contracts and the clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States which prohibits the State of California from depriving appellant herein of its property without due process of law and from denying to appellant the equal protection of the laws. The decision and judgment of the Supreme Court of California were in favor of the validity of said order of the Railroad Commission and against the rights, titles, privileges and exemptions specifically set up and claimed by appellant herein under each of said clauses [fol. 270] of the Constitution of the United States, all of which is fully apparent in the record and proceedings of the case and in the rendition of said decision and judgment

and is specifically set forth in the Assignment of Errors next hereinafter set forth.

### Assignment of Errors

Said American Toll Bridge Company, appellant herein, assigns the following errors in the record and proceedings of said case:

#### Impairment of Contract Obligations

1. The Supreme Court of the State of California erred in holding and deciding that the Railroad Commission's order establishing the tolls to be charged and collected by appellant for pedestrians and automobiles using appellant's Carquinez Bridge over the Straits of Carquinez between the Counties of Contra Costa and Solano, State of California, did not impair the obligation of the contract evidenced by Ordinance No. 171 of the Board of Supervisors of said Contra Costa County, including the provisions of existing statutes which were read into and became a part of said contract and the acceptance of the provisions of said Ordinance by appellant's assignor, within the meaning of Section 10 of Article I of the Constitution of the United States.

#### [fol. 271] Denial of Due Process of Law—Confiscation of Property

2. The Supreme Court of the State of California erred in holding and deciding that the Railroad Commission's order did not confiscate appellant's property in said Carquinez Bridge and did not constitute a deprivation of said property without due process of law and did not deny to appellant the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

3. The Supreme Court of the State of California erred in holding and deciding that the Railroad Commission's order did not fail to recognize and to give effect to the rights of appellant in a wasting asset, namely, the Carquinez Bridge, the title to which will revert to the Counties of Contra Costa and Solano on the expiration in 1948 of the franchise granted by said Ordinance No. 171 for the construction and operation of the Carquinez Bridge, and in holding and deciding that the Railroad Commission's order

did not confiscate appellant's property in said Carquinez Bridge and did not constitute a deprivation of said property, without due process of law, and did not deny to appellant the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

4. The Supreme Court of the State of California erred [fol. 272] in holding and deciding that the Railroad Commission's order did not confiscate appellant's property in both the Carquinez and the Antioch Bridges and did not constitute a deprivation of said property without due process of law and did not deny to appellant the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

#### Denial of Due Process of Law—Procedure Before Railroad Commission

5. The Supreme Court of the State of California erred in holding and deciding that the procedure before the Railroad Commission was not unfair, unjust and arbitrary and did not constitute a denial to appellant of due process of law and did not deny to appellant the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

6. The Supreme Court of the State of California erred in failing to hold that, even though the language of Sections 2845 and 2846 of the Political Code of the State of California be regarded as the language of regulation and not the language of contract, the Legislature of 1937, in declaring toll bridges to be public utilities, did not amend or repeal said sections of the Political Code or any part thereof and that it was the duty of the Railroad Commission, stepping into the shoes of the Board of Supervisors of said Contra Costa County, to follow, in fixing appellant's said [fol. 273] tolls, the rate making standard fixed and prescribed by the Legislature with reference to toll bridges, in said Sections 2845 and 2846 of the Political Code, and said Supreme Court of the State of California further erred in failing to hold that the Railroad Commission's failure to follow the standard of reasonableness of rate making for toll bridges theretofore established by the Legis-

lature constituted a denial to applicant of due process of law and a denial of the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

7. The Supreme Court of the State of California erred in holding and deciding that the Railroad Commission's order severing the Antioch Bridge from appellant's single, unified transportation system, and fixing tolls for the Carquinez Bridge alone, notwithstanding the fact that the record shows without dispute that the inevitable effect of the reduction of tolls on the Carquinez Bridge would, by the force of competition between the two bridges, compel appellant to make a similar reduction in the tolls charged on the Antioch Bridge, was not unfair, unjust and arbitrary action and did not deny to appellant due process of law and did not deny to appellant the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

8. The Supreme Court of the State of California erred [fols. 274-326] in holding and deciding that the procedure before the Railroad Commission, particularly the institution of the case by the Railroad Commission on its own motion by a mere order or notice of inquiry without the filing of a complaint or the making of any charges, and the conduct of the inquiry thereafter without the formulation of any issues by the filing of answer or in any other way, and the Railroad Commission's failure to advise appellant at any time or in any way, prior to the decision, of the Government's proposals, did not deny to appellant due process of law and did not deny to it the equal protection of the laws, within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

#### Prayer for Reversal

For which errors said American Toll Bridge Company, appellant herein, prays that the said decision and judgment of the Supreme Court of the State of California, dated September 27, 1938, in the above entitled cause, be reversed and that a judgment be rendered in favor of said appellant herein, and for costs.

Dated at San Francisco, California, this 28th day of October, 1938.

Max Thelen, B. R. Aiken, Counsel for Appellant.



[fol. 327] [File endorsement omitted]

[fol. 328] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 28, 1938

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California on the 27th day of September, 1938, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Errors, Prayer for Reversal and Statement as to Jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the [fol. 329] above entitled cause, as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Clerk of the Supreme Court of the United States so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered that the suspending bonds now on file with the Supreme Court of the State of California in the above entitled suit remain in full force and effect throughout the pendency of the said appeal proceedings; that security for costs on appeal be fixed at the sum of \$500.00, and that upon approval of bond in said amount this order shall operate as a supersedeas.

Dated at San Francisco, California, this 28th day of October, 1938.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

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[fols. 330-333] (Supersedeas bond on appeal approved, and to operate as a supersedeas, and filed October 28, 1938, omitted in printing.)

[fols. 334-347] (Citation, with statement directing attention to Rule 12, Paragraph 3 of Rules of Supreme Court of United States, with admission of service endorsed thereon, filed October 28, 1938, omitted in printing.)

[fol. 348] BEFORE THE RAILROAD COMMISSION OF THE STATE  
OF CALIFORNIA

[Title omitted]

### Transcript of Proceedings, Testimony and Exhibits

#### COLLOQUY

Commissioner Riley: The Commission will be in order. This is the time and place set for the hearing of Case No. 4244, being the investigation on the Commission's own motion in regard to the operations, rates, contracts, rules, and so forth, of the American Toll Bridge Company, the San Francisco Toll Bridge Company and Dumbarton Toll Bridge Company, toll bridge corporations as defined in Statutes of 1937, Chapter 896; also Case 4259, likewise an investigation into the rates of the American Toll Bridge Company covering the toll bridge over the Carquinez Straits, to be heard in [fol. 349] the court room at San Francisco.

Before taking the appearances I would like to state that in Case 4244, which covers all of the toll bridges declared to be public utilities that, in so far as the general investigation is concerned, the Commission has not made a sufficient investigation to report at this time. However, I would like to take the appearances with respect to the general case, and then the appearances for the American Toll Bridge Company. So if the reporter will please take the appearances in Case 4244.

Commissioner Riley: The Highway Commission is to be represented here this morning, their attorneys are on the way but are not here apparently and we will note their appearances later. Mr. Ira Rowell, Attorney for the Commission, and Mr. Joseph Hunter of the technical staff, are appearing for the Commission.

With the understanding there will be no proceedings here this morning with respect to the first case, 4244, we will proceed, unless those representing the other toll bridge

companies have some comment to make at this time. If not, we will proceed with the hearing on Case 4259.

Mr. Rowell: I wanted to make this suggestion, that the record show that the case is taken off the calendar until further notice, if that meets with the Commission's desire.

Mr. Thelen: Before the order is made I think I would like to make a brief statement in behalf of the American Toll Bridge Company. I should like to point out that the American Toll Bridge Company owns and operates two [fol. 350] toll bridges, one known as the Carquinez Bridge and the other known as the Antioch Bridge, and also, through a subsidiary, owns and operates what is known as the Martinez-Benicia Ferry. The franchises for both of these bridges were granted early in 1923 and in each case the franchise runs for 25 years, that is, until 1948, and each franchise provides, at the termination of the franchise, the property of the bridge shall revert to the adjacent counties without charge. I am making this statement because of the possibility that, under the order which the Commissioner has in mind, this proceeding may be limited to one of the bridges and I desire very respectfully to point out why we believe that, as a matter of equity and fairness, as far as we are concerned, the American Toll Bridge Company, consideration should be given to both the bridges.

Both of these bridges, if the Commissioner pleases, were financed and constructed and they are both owned and operated by the same Company, that is, the American Toll Bridge Company. They both cross the same water barrier, that is, the Carquinez Straits and the San Joaquin River, at points which are only about 25 miles apart. As far as the ferry is concerned, it operates across Carquinez Straits at a point about 8 miles east of the Carquinez Bridge. I wish to point out both of these bridges serve substantially the same territory, that is, the San Francisco Bay territory on the south, and on the north the Sacramento Valley, the Counties of Sonoma, Solano, Napa and Lake. Although there is certain traffic which is peculiar to one or the other of these two bridges, yet in the large sense and as far as the major traffic is concerned, those [fol. 351] bridges are both competitive.

It is well known that the operations of the Antioch Bridge have been less satisfactory financially than the op-

erations of the Carquinez Bridge. But if the rates of the Carquinez Bridge are considered alone without regard to the earnings of the combined system, we think it is inevitable that an injustice will be done to the Company and to the service which it renders. We are quite certain that a comprehensive study of the facts will show that fairness and equity require consideration of the rates and earnings of the entire properties of the American Toll Bridge Company, rather than one bridge separately.

And it seems to us that the Commission must have had that situation in mind when it initiated the original inquiry in Case 4244, which inquiry was addressed to the corporations and not to a separate bridge. In other words, the inquiry in that case was addressed to the American Toll Bridge Company and not limited to one or the other of the particular bridges which are operated by that Company.

The course which I am suggesting is one which I believe the decisions of the Commission in the past will show to be entirely proper and just, because it has been always the policy of the Commission, as I have understood it, in matters of this kind to consider not mere parts or portions of a system but to consider the entire system. Your Honor is, of course, familiar with the Commission's practice as to electric rates. It has always been, as I understand it, the Commission's policy in connection with electric rates to consider the rates of an entire system, not taking out just [fol. 352] the fat on the one hand and the lean on the other, but considering the two together. And for that reason, as I understand it, the electric rates for the city areas have been fixed somewhat higher than they would have been fixed had those areas been considered alone. And the purpose was, of course, to take care of the agricultural situation, the lean territory, which needed assistance from what we might call the fat territory.

That same principle has been applied in natural gas rate cases. For instance, take the famous Pacific Gas natural gas case, which was decided by Commissioner Seavey in November of 1933, reported in the 39th C. R. C. at 49, in that case the Commission considered at some length the question as to whether they would continue the policy which they had adopted in the past of correlating the city with the urban territory, that is, the fat with the

lean, and the Commission in the decision when written by Commissioner Seavey said,

"It will be the endeavor to make all adjustments in the spread of rates which the record indicates are equitable but no change in the general policy heretofore adopted will be recommended."

So that the Commission in that case and in subsequent cases continued the general policy to which I have referred.

Another interesting case came to the Commission from San Diego, involving the San Diego Consolidated Gas & Electric Company. In that case in the decision written in 1932 by Commissioners Seavey and Carr the Commission provided for higher rates for the electric properties than [fol. 353] would have been allowed if those properties were considered alone but they were considering the entire business, including the less profitable natural gas business, and for that reason they fixed somewhat higher rates for electric properties than would have otherwise been the case, in order to carry the gas properties.

And, of course, the Commission is familiar with the fact that, so far as the telephone company is concerned, the more populous exchanges have always had rates somewhat higher than would be the case if they were considered alone, the purpose being to help carry the lean exchanges which are in the less thickly populated territory.

In our case our two bridges, we think, come clearly within that rule. We serve the same territory, they are competitive with one another, they are owned and operated by the same company, were financed by the same company, constructed by the same company and we think it clearly a case in which it would be proper for the Commission to apply the rule which is applied to these other utilities.

We, of course, do not desire in any way to interfere with whatever plans the Commission may have as to Case No. 4244 as far as the other toll bridge companies are concerned; but as far as we are concerned, the American Toll Bridge Company, we believe it only proper that these two bridges be considered together. And for that reason we respectfully submit a motion to the effect that, in so far as the American Toll Bridge Company is concerned, Cases 4244 and 4259 be consolidated for hearing and decision.



Mr. Rowell: May I make a brief statement, Mr. Commissioner?

[fol. 354] Commissioner Riley: Yes, Mr. Rowell.

Mr. Rowell: When on August 27th the amendment to the Public Utilities Act became effective which placed jurisdiction in this Commission over toll bridges, the Commission instituted its investigation making all the companies respondents. I suppose the Commission and its staff will proceed to make studies with respect to all of these bridges: but when, according to my information, they first prepared some information with respect to the Carquinez Bridge, the Commission thought it proper to institute a special investigation in that matter, making the American Toll Bridge Company the respondent in that case. And although I think the Commission should entertain the motion, that is, take it under submission, the motion made by Mr. Thelen, I see no reason why we can not proceed with the instant proceeding and introduce evidence in respect to the Carquinez Bridge particularly and, of course, the parties will not be stopped in putting in any evidence involving the other bridges in so far as relevant.

Mr. Thelen: We on our part certainly do not want any delay. I am entirely in accord with Mr. Rowell's suggestion that the Commission proceed, taking this motion under advisement and ruling on it whenever the Commission thinks it proper.

Commissioner Riley: Without attempting to pass on the legal questions involved, the fact remains the Commission through its staff has made certain investigations with respect to the Carquinez Bridge and we desire to go forward at this time with those reports.

[fol. 355] Mr. Thelen: That is perfectly satisfactory.

Commissioner Riley: And with that understanding the motion will be entertained for later consideration.

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F. COLEMAN, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination.

Mr. Rowell: What position do you occupy?

A. I am employed on the Commission's Department of Finance and Accounts.

Q. Will you explain briefly how long you have held that position and the general nature of your work?

A. I have held that position for some 15 years. It has been my duty primarily to work in connection with the financial aspects of proceedings before the Commission. That involves analysis and study of applications for permission to issue securities, involves certain rate cases, particularly cost of money features, and it involves the investigation and auditing of records of the utilities.

Q. Have you made any study of the operations of the Carquinez Toll Bridge Company?

A. Mr. Dunford, of the Commission's Transportation Division, and I made an investigation of the Commission's records at its office, for the primary purpose of determining the recorded costs of construction and operation.

Q. Have you prepared that material in the form of a proposed exhibit?

A. Yes, I have.

Q. Will you please hand the original to the Commissioner?

A. I would like to point out on the face of that—

[fol. 356] Commissioner Riley: Had we better introduce this at this time or later?

Mr. Rowell: I ask to have it introduced as Exhibit No. 1, subject to any objection that may be made.

The Witness: I would like to point out that the case number on there should be changed to the case number for this particular bridge, 4259. It says 4244.

Mr. Rowell: If that correction may be made on the face of the exhibit, the copies will show the correction.

Commissioner Riley: That will be noted.

(Here follows Exhibit No. 1—pages 1 to 22 (down to words "The income and . . ."), inclusive, and also page 25 and page 26 (lines 1 and 2):)

[fol. 357]

EXHIBIT No. 1—C. R. C.

Witness: F. Coleman

Case No. 4259—Corrected Case

Investigation of the American Toll Bridge Company

Historical Summary—Cost of Financing—Assets and Liabilities—Revenues and Expenses

Railroad Commission of the State of California

Department of Finance and Accounts

San Francisco, California

[fol. 358]

October 19, 1937.

American Toll Bridge Company

## Historical Summary:

American Toll Bridge Company was organized under the laws of the State of Delaware on or about May 28, 1923 with an authorized capital stock of \$5,000,000 divided into 5,000,000 shares of the par value of \$1.00 each, all common.

It appears that the corporation was organized by those in control of the affairs of Rodeo-Vallejo Ferry Company<sup>1</sup> for the express purpose of constructing and operating a toll bridge across the Carquinez Straits between a point near Crockett in Contra Costa County, and a point near Vallejo, Solano County, and a toll bridge across the San Joaquin River from a point near Antioch, Contra Costa County, and Sacramento County. The former bridge is known as the Carquinez Bridge and the latter as the Antioch Bridge. They will be so referred to in this report.

On February 5, 1923 a twenty-five year franchise was granted by the Board of Supervisors of the County of

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<sup>1</sup> Rodeo Vallejo Ferry Company operated ferry boats between Shortway, near Valona, Contra Costa County, and Morrow Cove, Solano County.

Contra Costa to the Rodeo-Vallejo Ferry Company providing for the construction and operation of the Carquinez Bridge. On June 4, 1923 a twenty-five year franchise was granted by the Board of Supervisors of the County of [fol. 359] Contra Costa to Delta Bridge Corporation<sup>2</sup> providing for the construction and operation of the Antioch Bridge. The rights to construct and operate the bridges shortly thereafter were assigned to American Toll Bridge Company.

Construction work started on the Carquinez Bridge during April 1923 and on the Antioch Bridge during March 1924. The Antioch Bridge was opened to traffic on January 1, 1926 with temporary approach roads which were not completed until July 1927. The Carquinez Bridge was opened to traffic on May 21, 1927 with a temporary fender system at the base of the center pier. The permanent fender was completed during December 1930.

On July 2, 1923 the bridge company acquired ninety per cent of the total outstanding capital stock of Rodeo-Vallejo Ferry Company, through the issue of its own stock, and during the following months purchased for cash the remaining ten per cent. This company at present owns certain water front lands and other real estate and improvements.

During 1928 the bridge company purchased for \$137,725 all the outstanding stock (\$39,350 par value) of Martinez-Benicia Ferry and Transportation Company.

#### Control of American Toll Bridge Company:

American Toll Bridge Company, the operator of the two bridges, since its organization has been controlled through [fol. 360] stock ownership by American Toll Bridge Company of California.

The latter company was organized under the laws of the State of Delaware on or about May 28, 1923 with an authorized capital stock of 750,000 shares of Class "A" non-vot-

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<sup>2</sup> Delta Bridge Corporation was organized under the laws of the State of California on or about December 21, 1922. Its outstanding stock (\$500 par value) was acquired on July 2, 1923 by American Toll Bridge Company.

ing stock of the par value of \$1 a share and 10,000 shares of Class B voting stock of no par value.

At the outset this company received all the authorized capital stock (\$5,000,000 par value) of American Toll Bridge Company, the operating company, except \$1,000 issued to incorporators, in exchange for stock of Rodeo-Vallejo Ferry Company and Delta Bridge Corporation it then held and certain real estate contracts and franchise. Thereafter it donated back to the operating company certain of these shares and sold other shares, all as herein-after set forth. At present it is the owner of \$1,530,038 of the operating company's stock (of which \$3,719,593 now is outstanding) or approximately 41.13 per cent of the total amount.

The holding company issued its authorized shares of stock principally to the then holders of the stock of Rodeo-Vallejo Ferry Company and in payment for certain lands and rights. It appears that the 10,000 shares of Class B voting stock were issued in equal amounts to Aven J. Hanford and Oscar Klatt, the president and secretary respectively, of the ferry company. Subsequently, American Toll Bridge Company, the operating company, acquired Mr. Klatt's holdings, leaving now outstanding in the hands of the public, 5,000 shares of voting stock.

All of this voting stock of the holding company (5,000 shares) is said to be held by Mrs. Audrey V. Heck, the widow of Aven J. Hanford.

#### [fol. 361] Method of Financing Cost of Properties:

American Toll Bridge Company has financed the cost of its properties through the issue, for the consideration hereafter shown, of the \$5,000,000 of stock, \$4,500,000 of first mortgage 7 per cent bonds and \$2,000,000 of second mortgage 8 per cent bonds; through the use of moneys obtained from Rodeo-Vallejo Ferry Company and through the investment of surplus earnings and moneys represented by its reserves.

From time to time the company acquired certain shares of the stock and paid and retired bonds. Up to the middle of 1935 it had reduced its outstanding stock to \$3,719,593 and its outstanding 7 per cent and 8 per cent bonds to



\$4,180,000. During 1935 it refunded its bonds and issued \$4,300,000 of first mortgage five and one half per cent bonds. This new issue has since been reduced to \$3,544,000.

### Balance Sheet as of August 31, 1937:

The books of the American Toll Bridge Company show, as of August 31, 1937, assets and liabilities as follows:

[fol. 362]

#### Assets:

##### Property:

Carquines Bridge.....	\$7,863,151.17	
Antioch Bridge.....	1,734,477.02	
Real Estate.....	194,950.04	
Franchise.....	1.00	
Furniture and fixtures.....	24,353.32	\$9,816,932.55

##### Investments:

Stock—Martinez Benicia Ferry.....	\$137,725.00	
Amer. Toll Bridge Co. of California.....	326,459.57	
Rodeo-Vallejo Ferry.....	500,000.00	964,184.57

##### Special Deposits:

Retirement fund—1st 5½s.....	\$44,000.00	
Interest fund—1st 5½s.....	21,780.00	
Redemption fund—1st 7s.....	2,452.50	68,232.50

##### Current Assets:

Cash in bank.....	\$410,922.79	
Petty cash.....	1,525.00	
Wm. F. Morrish, Agent.....	42,197.74	
Accounts receivable.....	30,492.77	
Notes receivable.....	1.00	485,139.30

##### Prepaid Expenses:

Insurance.....	\$68,064.81	
Taxes.....	80,949.63	149,014.44

##### Treasury Securities:

Bonds—1st 5½s par value.....	\$56,000.00	
Stock—Par value.....	1,280,407.00	1,336,407.00

##### Deferred Debits:

Unamortized bond discount and expense:		
Old issues.....	\$334,847.14	
1½t—5½s.....	140,152.22	
Premium on called bonds.....	96,086.03	571,085.39

Total assets.....		<u>\$13,390,995.75</u>
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[fol. 363]

## Liabilities:

Capital Stock.....		\$5,000,000.00
Bonds:		
1st 5½s.....	\$3,600,000.00	
1st 7s (Called).....	2,000.00	3,602,000.00
Advances from System Corporations:		
Rodeo-Vallejo Ferry Co.....		597,573.09
Current Liabilities:		
Accounts payable.....	2,087.25	
Interest payable.....	16,902.50	
Taxes payable.....	8,392.19	
Unpaid premium on bonds.....	50.00	27,431.94
Deferred credits:		
Option agreement—O. H. Klatt.....	22,196.86	
Prepaid revenue-rent.....	62,158.52	84,355.38
Reserves:		
Bad debts.....	\$1,000.00	
Amortization of bridge lands.....	48,017.02	
Depreciation—Carquinez Bridge.....	2,689,714.25	
Depreciation—Antioch Bridge.....	616,852.41	
Depreciation—Furniture.....	15,735.86	
Contingencies.....	57,280.00	
California Unemployment Fund.....	66.74	
Federal Old Age Annuity.....	55.95	
Employees Retirement Fund.....	20,000.00	
Federal income tax.....	33,111.71	
Dividends withheld.....	25	
2% gross earnings tax—Carquinez.....	225,846.49	
2% gross earnings tax—Antioch.....	29,050.18	3,736,730.86
Surplus:		
Earned surplus.....		342,904.48
Total liabilities.....		\$13,390,995.75

## [fol. 364] Carquinez Bridge Cost:

The company's balance sheet shows its reported investment in the Carquinez Bridge as of August 31, 1937 at \$7,863,151.17.

In arriving at this figure it has deducted \$300 representing interest received by it from Duncanson-Harrelson Company which would seem to be an income credit. Adding the figure back results in an adjusted book figure of

\$7,863,451.17, which analysis shows is made up of the following:

Payments to contractors.....		\$5,137,779.51
Fender system.....		597,396.28
Labor and equipment.....		14,039.60
Approaches.....		25,120.70
Buildings.....		28,553.53
Tug "Escort".....		4,951.97
Pile Driver "Haveside".....		6,994.94
Schooner "Bangor".....		1,750.00
Organization expense.....		476,707.70
Engineering overhead equipment.....	\$22,561.95	
Office equipment.....	1,020.31	
automobile.....	724.67	
salaries and expenses.....	352,165.93	
office salaries.....	13,478.75	
damage claims.....	124.50	390,076.11
General overhead:		
office salaries.....	\$104,471.37	
office supplies and expense.....	30,717.38	
special services.....	102,938.24	
legal fees.....	198,763.24	
directors' fees.....	9,631.75	
miscellaneous.....	38,209.18	
taxes and licenses.....	17,690.62	
insurance.....	6,736.76	
interest and amortization.....	688,092.56	
depreciation furniture.....	1,235.28	
advertising.....	8,883.60	
trustees' fees.....	4,008.16	
rent during construction.....	3,395.00	
charged to operation—Credit.....	(34,662.31)	1,180,110.83
Total for Carquinez Bridge.....		<u>\$7,863,451.17</u>

The company on its books has recorded against the Carquinez Bridge a depreciation reserve of \$2,689,714.25.

[fol. 365] Payments to Contractors:

The payments to contractors, included in the ledger balances in the amount of \$5,137,779.51, are made up of the following:

T. C. McGill—excavation and approach.....	\$11,295.92
E. J. Soule—steel.....	27,316.62
Duncanson-Harrelson Co.—foundation work and paving.....	763,908.14
Raymond Concrete Pile Co.—Foundation.....	110,023.52
Blake Bros.—aggregate.....	47,719.28
Missouri Valley Bridge & Iron Co.—founda- tions.....	1,417,660.15
Daniels Construction Co.—aggregate.....	33,639.49
U. S. Steel Products Co.—superstructure.....	2,686,854.47
Healy-Tibbetts Co.—Riprap.....	39,361.92
Total.....	<u>\$5,137,779.51</u>

To the Raymond Concrete Pile Co. was paid \$60,023.52 during 1923. Thereafter its work was discontinued and suit was brought against the company for breach of contract which was settled by the payment by the company during 1928 of an additional sum of \$50,000. which now is included in the cost of construction.

#### Buildings:

Included in the cost of the Carquinez Bridge is an item of \$28,553.53 for buildings. Analysis of the account shows expenditures for the following structures:

Toll house and garage	\$17,092.77
Carquinez Inn and Comfort Station	2,659.86
Miller & McKinney Houses, etc.	8,800.90

<b>Total</b>	<b>\$28,553.53</b>
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The Miller and McKinney houses are rented for dwelling purposes and the revenue therefrom, together with the revenue from the Inn adjacent to the toll house, is treated as miscellaneous income.

The general offices of the corporation are located at the toll house but no part of the cost of construction is allocated [fol. 366] on the books to the Antioch Bridge.

#### Floating Equipment:

The books of the company show an investment during the construction period of \$20,946.91 in the Tug "Escort" and the Pile Driver "Haveside".

During 1933 the tug was sold for \$4,000. and the pile driver for \$5,000. and these two amounts were credited to the capital accounts, leaving a balance still remaining on the books of \$4,951.97 for the "Escort" and \$6,994.94 for the "Haveside" although these two pieces of floating equipment no longer are owned.

#### Organization Expenses:

These items of expense are included in the cost of the Carquinez Bridge in the amount of \$476,707.70, being carried on the books in an account styled "Construction Overhead" along with the general construction overhead expenditures.

The company set up total organization expenses in the amount of \$405,987.85 and commissions for the sale of stock in the amount of \$184,274.53, the two items aggregating

\$590,262.38. During 1927 the amount was apportioned on the books between the two bridges, \$476,707.70, or 80.762 per cent., going to the Carquinez Bridge, and \$113,554.68, or 19.238 per cent. to the Antioch Bridge.

The total organization expenses are made up of the following items:

[fol. 367]

Item	Total	Charged to Antioch Bridge	Charged to Carquinez Bridge
O. H. Klatt (No detail available) ..	\$20,235.15	\$3,892.84	\$16,342.31
Legal fees and expenses .....	117,279.52	22,562.23	94,717.29
Auditing fees and expenses .....	7,504.50	1,443.72	6,060.78
Other fees and expenses .....	937.50	180.36	757.14
Cost of opening celebrations .....	15,926.19	3,063.88	12,862.31
Antioch .....	\$4,409.39		
Carquinez .....	11,516.80		
Expenses for stock issues:			
Taxes, licenses, stamps .....	4,541.00	873.60	3,667.40
Stock pooling expense .....	2,619.93	504.02	2,115.91
Advertising stock sales .....	13,674.26	2,630.65	11,043.61
Commissions paid .....	184,274.53	35,450.73	148,823.80
Expenses (No detail available) ..	223,269.80	42,952.65	180,317.15
Total .....	<u>\$590,262.38</u>	<u>\$113,554.68</u>	<u>\$476,707.70</u>
		19.238%	80.762%

As to the items of \$20,235.15 apparently representing expenditures made by Mr. Oscar H. Klatt, one of the officers and organizer of the company, and of \$223,269.80, said to consist of expenses incurred in selling \$119,609.00 of stock and incurred by Mr. Klatt for organization, no supporting explanation or details were located. These amounts, or part of them, were possibly expended by Rodeo-Vallejo Ferry Company, whose records in this connection were not available.

The stock pooling expense of \$2,619.93 represents costs of signing up stockholders in a pooling or voting trust arrangement.

#### Legal Fees and Expenses:

Legal fees and expenses are included in organization expenses in the amount of \$117,279.52 and in general overheads in the amount of \$263,985.66, making a total in capital accounts of \$381,265.18. Of this amount \$300,340.95 is included in the cost of the Carquinez Bridge and \$80,924.23 is included in the cost of the Antioch Bridge.

#### [fol. 368] Office Salaries:

These are included in the cost of the Carquinez Bridge in the amount of \$104,476.37.



The expenditures consist of amounts paid officers and employees of the bridge company and include the following:

Prior to 1925.....	\$53,969.27	
Less—Charged to Antioch.....	11,448.50	\$42,520.77
During 1926.....		41,863.75
During 1927 (January to May).....		20,086.85
Total.....		<u>\$104,471.37</u>

### Special Services:

These items include \$104,000 representing 65,000 shares of stock issued at \$1.60 a share, which were delivered to Robert L. Dunn in settlement of a claim by him for services rendered in connection with the company's bond financing in 1925. The remaining items in general represent expenditures incurred in obtaining the stockholders' agreement to join in a voting trust arrangement.

### Antioch Bridge-Cost:

The balance sheet shows the company's reported investment in the Antioch Bridge as of August 31, 1927, at \$1,734,477.02. This figure is made up of the following:

Payments to contractors:		
Bay Construction Company.....	\$36,461.23	
Little, Dodge & Reynolds.....	124,999.40	
Dyer Bros.....	325,996.77	
Blake Bros.....	46,508.04	
Daniels Construction Co.....	15,810.25	
Duncan-Harrelson Co.....	799,736.62	\$1,319,512.31
Cement.....		53,287.39
Labor and equipment.....		15,075.93
Buildings.....		1,169.49
Land.....		1,500.00
Organization.....		113,554.68
Engineering salaries, supplies and expenses.....		40,424.90
Six-Minute Ferry.....		50,000.00
[fol. 369] General Overhead:		
Office salaries.....	\$11,448.50	
Office supplies and expense.....	4,123.62	
Special services.....	24,811.24	
Legal fees.....	57,227.81	
Directors' fees.....	1,718.25	
Miscellaneous.....	8,486.95	
Taxes and licenses.....	1,981.56	
Insurance.....	930.82	
Interest and amortization.....	28,790.51	
Depreciation—furniture.....	239.87	
Advertising.....	168.19	
Rent during construction.....	25.00	\$139,952.32
Total for Antioch Bridge.....		<u>\$1,734,477.02</u>

The \$50,000 item included for the Six-minute Ferry is said to represent an expenditure made in acquiring the franchise of a competing ferry line which was immediately discontinued.

### Real Estate:

On July 2, 1923 the company acquired from American Toll Bridge Company of California 55 acres of land in Solano County and 1 acre near Antioch in Contra Costa County which it entered on its books at a total cost of \$1,500,000. On May 23, 1935 it adjusted this figure to \$137,896.83 to reflect an appraised value as of January 2, 1925 determined by the American Appraisal Company. The write-down was charged to "Capital surplus".

As of May 31, 1935 the company created a reserve to amortize this \$137,896.83 figure. Such reserve is being accumulated on the six per cent sinking fund basis over the life of the company's franchise by charges to operating expenses. The total in the reserve on August 31, 1937 was \$48,017.02.

Since the original acquisition the company has expended \$57,053.21 for additional lands and rights of way bringing the total book figure up to \$194,950.04.

### [fol. 370] Advances for Rodeo-Vallejo Ferry Company:

The company's books show an indebtedness of \$597,573.09 due Rodeo-Vallejo Ferry Company, its wholly owned subsidiary.

Of this amount \$292,000 was incurred in October 1925 through the purchase by the bridge company of \$182,500 par value of its own stock at \$1.60 a share. As to the balance it appears that during the construction period the bridge company was advanced approximately \$325,000 by the ferry company for construction purposes. Subsequently, the amount has been reduced by expenditures made by the bridge company for the account of the ferry company.

The balance now unpaid of \$597,573.09 carries no interest.

### Capital Stock:

The company at the outset as stated above, issued all of its authorized capital stock in exchange for stocks and prop-

erties. The journal entries reflecting the issue are of interest and are given below:

1923, May 28: Subscribers .....	\$1,000	
Capital stock .....		\$1,000
(To incorporators) .....		
July 2—Rodeo-Vallejo Ferry Co. stock .....	\$2,499,500	
1760 sh. preferred .....		
2740 " common .....		
Delta Bridge Co. stock .....	500	
5 shs. .....		
Real estate .....	1,500,000	
55 acres—Solano .....		
1 acre—Antioch .....		
Franchise—Delta Bridge Co. ....	1,250,000	
Contracts .....	5,000,000	
Golden Gate Ferry Co. ....		
Rodeo-Vallejo Ferry Co. ....		
Capital stock .....		\$4,999,000
Initial surplus .....		5,251,000

(To record the acquisition of sundry assets from the American Toll Bridge Company of California for the issuance of all the remaining capital stock of this corporation in accordance with the minutes of a directors' meeting held May 29th, 1923. The assets acquired are in the opinion [fol. 371] of the Board of Directors, worth the values stated in view of the prospective earnings to be realized therefrom which when realized will yield a return of over 12% on the outstanding capital stock.)

Subsequently the company wrote down the values assigned in the foregoing journal entry, to the following:

Rodeo-Vallejo Ferry Company stock .....	\$500,000 00
Real Estate .....	137,896.83
Franchises .....	1 00
Contracts .....	
Total .....	<u>\$637,897.83</u>

### Subsequent Transactions in Stock:

It appears that American Toll Bridge Company of California in receiving the capital stock of the operating company, as set forth in the preceding paragraphs, agreed to donate \$1,000,000 of such stock back to the operating company and in addition to sell \$1,500,000 of stock and to donate the receipts to the operating company. The \$1,000,000 of stock thus to be reacquired by the operating company was to be offered for sale by it at \$2.00 a share.

The original plans, then, called for a total stock issue by the operating company of \$5,000,000 of which \$2,500,000 was to have been held by the holding company and \$2,500,000 by the public.

From time to time, however, this plan was modified. The holding company donated back to the operating company \$1,993,043 of the operating company's stock and in addition turned over to it \$69,475 of such stock which had been purchased by it with cash advanced by the operating company. The operating company was not successful in disposing of all its reacquired stock. An analysis of its treasury stock account indicates the following transaction having taken place:

[fol. 372]

Originally issued .....	\$5,000,000
Reacquired from holding company:	
—by Donation .....	\$1,993,043
—by cancellation of accounts .....	69,475(3)
Reacquired from Rodeo-Vallejo Ferry Company at \$1.60 a share—a total price of \$292,000 .....	182,500
Sub-total .....	<u>\$2,245,018</u>
Re-issues of stock:	
Sales less cancellation and adjustments .....	399,611
Delivered to bond underwriters as bonus .....	500,000(4)
Delivered to R. L. Dunn in settlement of law suit .....	65,000(5)
Sub-Total .....	<u>\$964,611</u>
Balance .....	1,280,407
Outstanding Aug. 31, 1937 .....	<u>\$3,719,593</u>

(3) Of this amount \$28,471.75 was credited to amounts receivable from the holding company and \$41,003.25 was credited to "Initial surplus".

(4) This stock was recorded as reissued at \$1.60 a share, a total of \$800,000, and was charged to bond discount and expense in that amount.

(5) This stock likewise was recorded at \$1.60 a share, a total of \$104,000, and was charged to construction overhead in that amount.

The records indicate that through these reissues of stock, the bridge company received cash and subscriptions of \$795,743.81 and paid certain stock selling expenses of \$10,126.50, a total of \$805,870.31. At the same time it incurred indebtedness in the re-purchase of its stock in the amount of \$292,000 and charged off amounts receivable of \$28,471.75, a total of \$320,471.75. The difference between these two totals is \$485,398.56.

During the period of construction the holding company, on behalf of the operating company, sold shares of stock netting at \$1.60 a share, \$654,163.20, delivered 153,125 shares

in payment of legal fees of \$245,000, 139,062 shares in payment of \$222,499.20 due contractors, 10,000 shares in payment of stock sales advertising expenses of \$16,000 and paid [fol. 373] stock selling and other expense of \$228,269.80. In summary form, then, the company received in its stock financing:

Stock and assets—book figure	\$637,897.83
Net proceeds—sale of treasury stock	485,398.56
Proceeds—sale by holding company	654,163.20
Contractor's fees paid	222,499.20
Stock selling expenses and advertising	244,269.80
Legal fees	245,000.00
	<hr/>
Sub-total	\$2,589,228.59
Settlement of claims	104,000.00
Bonus to underwriters.	800,000.00
	<hr/>
Total	\$3,493,228.59

#### Issue of Bonds:

It appears that during December 1925 the company sold, at 90, the \$4,500,000 of first mortgage seven per cent bonds and \$2,000,000 of second mortgage eight per cent bonds, both issues being dated as of April 1, 1925 and maturing on April 1, 1945.

At the time of issue the company charged to unamortized discount and expense the following:

#### First mortgage bonds—

Stock issued to underwriters as bonus—250,000 shares at \$1.60	\$400,000
Discount	450,000
Expenses	9,750
	<hr/>
Total	\$959,750

#### Second mortgage bonds—

Stock issued to underwriters as bonus—250,000 shares at \$1.60	\$400,000
Discount	200,000
Expense	14,103
	<hr/>

Total	\$614,103
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[fol. 374] Considering the discount and expense in these amounts, the cost to the company of the money derived through the issue of its bonds would approximate 9.42 per cent. This percentage was determined as follows:

Item	First Mtge Bonds	Second Mtge Bonds	Total
Face amount.....	\$4,500,000	\$2,000,000	\$6,500,000
Discount & expense.....	459,750	214,103	673,853
Net Proceeds.....	\$4,040,250	\$1,785,897	\$5,826,147
Annual Charges:			
Interest.....	\$315,000	\$160,000	\$475,000
Amortization.....	22,987	10,705	33,692
Amortization of bonus stock:			
\$800,000 book figure.....	20,000	20,000	40,000
Total.....	\$357,987	\$190,705	\$548,692
Ratio—Total charges: to net proceeds.....	8.86%	10.68%	9.42%

There are included in capital accounts on the books of the company certain sums aggregating \$116,639 (6) which might properly be considered as bond expense. If these are so considered and amortized accordingly, the average cost would be increased to 9.71 per cent.

In the foregoing tabulation the discount and expense is amortized on the straight line basis. If amortized on the six per cent sinking fund basis, and the bonus stock disregarded, the average cost would be reduced to approximately 8.60%.

#### [fol. 375] Re-Financing of Bonds:

As of August 1, 1935 American Toll Bridge Company issued and sold at 96½ per cent of face value plus accrued interest a new issue of first mortgage 5½ per cent bonds due as follows:

Series A	\$350,000 on August 1, 1936.
Series B	350,000 on August 1, 1937.
Series C	400,000 on August 1, 1938.
Series D	3,200,000 on August 1, 1945.
Total	\$4,300,000

(6) Special services—R. L. Dunn	\$107,000.00
Trustees fees	8,043.66
Expenses	595.80
Legal—Rogers & Bray	1,000.00

The proceeds realized, together with cash on hand, were used to pay the then outstanding 7% and 8% bonds aggregating \$4,180,500, premiums upon calling said bonds amounting to \$131,300 and expenses incident to the new issue aggregating \$43,527.70. The discount suffered in the sale of the 5 $\frac{1}{2}$ % bonds aggregated \$150,500, making total discount and expense to be amortized over the life of the new bonds of \$194,027.70.

#### Cost of Money:

It appears that the average cost to the company of money obtained through the issue of its bonds now outstanding and represented by its reserves which are accumulated on the sinking fund basis, is 6.18%.

The following tabulation shows how this percentage was obtained:

[fol. 376]

Item	Amount	Discount	Expense (B)	Net Proceeds	Annual Charges		Effective Interest Rate
					Interest	Amort- ization	
<b>Bonds (A)</b>							
Series A.....	\$350,000	\$12,250	\$3,543	\$334,207	\$19,250	\$15,795	10.48%
Series B.....	350,000	12,250	3,543	334,207	19,250	7,896	8.12%
Series C.....	400,000	14,000	4,048	381,952	22,000	6,016	7.33%
Series D.....	3,200,000	112,000	32,394	3,055,606	176,000	14,439	6.23%
Sub-Total.....	\$4,300,000	\$150,500	\$43,528	\$4,105,972	\$236,500	\$44,144	6.84%
<b>Retirements:</b>							
Ser. A & B.....	\$700,000	\$24,500	\$7,086	\$668,414	\$38,500	\$23,689	9.30%
Balance.....	\$3,600,000	\$126,000	\$36,442	\$3,437,558	\$198,000	\$20,455	6.35%
<b>Reserves (C)</b> .....	\$3,354,581			\$3,354,581	\$201,275		6.00%
Total.....	\$6,954,581	\$126,000	\$36,442	\$6,792,139	\$399,275	\$20,455	6.18%

## Notes:

A. Do not include \$2,000 of first mortgage 7% bonds outstanding but which have been called for payment.

B. The total expenses applicable to the entire issue for the purposes of this tabulation have been apportioned to each series on the basis of the face amount of each series.

C. Includes only those reserves being accumulated on the 6% sinking fund method, namely:

Reserve for depreciation—Carmuez Bridge	\$2,689,714
Reserve for depreciation—Antioch Bridge	616,852
Reserve for amortization of bridge lands	48,015

[fol. 377] In the foregoing tabulation the discount and expense applicable to the bonds is amortized over the respective lives on the straight line basis. If amortized on the sinking fund basis the effective rate for the bonds now outstanding would be reduced to 6.24% and the average cost of money to 6.12%.

At the time the two old bond issues were called for payment there were balances on the books representing unamortized bond discount and expense in the total amount of \$440,521.88. The premiums necessary to call were reported at \$131,300, the two sums aggregating \$571,821.88. If this amount is amortized over the maximum life of the new bonds, the average cost of money would be increased to 7.02%, with amortization on the straight line basis, and to 6.75% on the sinking fund basis.

### Earnings:

During the entire period of the bridge operations from January 1, 1926 to August 31, 1937 the operating revenues have aggregated \$12,744,108.51, the operating expenses \$7,046,404.05 and the net operating revenue \$5,697,704.46. A combined income account for this period is as follows:

[fol. 378]

Carquinez Bridge:		
Operating revenue	\$11,292,063.87	
Operating expense	5,633,125.97	
		\$5,658,937.90
Antioch Bridge:		
Operating revenue	\$1,452,044.64	
Operating expense	1,413,278.08	
		\$38,766.56
Total:		
Operating revenue	\$12,744,108.51	
Operating expense	7,046,404.05	
		\$5,697,704.46
Non-Operating Revenue		135,972.35
Gross Corporate Income		\$5,833,676.81
Deductions:		
Interest and amortization of debt discount and expense	\$4,699,142.28	
Amortization of bond premiums	32,040.24	
Corporation franchise tax	10,410.06	
Capital stock tax	3,077.00	
Income tax	163,434.02	
Miscellaneous	146.50	
		\$4,908,250.10
Net profit		<u>\$925,426.71</u>

[fol. 379] A summary of the surplus account shows the following:

Profit from operation.....		\$925,426.71
Earnings—interest, dividends, rents—prior to operations.....		194,127.86
Profit on bonds reacquired.....		180,910.91
Depreciation adjustment.....		366,610.14
Sub-Total.....		<u>\$1,667,075.62</u>
Deductions:		
Taxes and expense adjustments.....	\$20,590.08	
Loss on sale of property.....	720.25	
Bond discount adjustment.....	362,897.50	
Reserve for bridge lands.....	37,505.57	
Reserve for contingencies.....	57,280.00	
Reserve for depreciation of furniture.....	10,157.60	
Capital surplus.....	175,784.25	
Dividends.....	642,443.48	
Settlement of law suit.....	3,000.00	
Bad debts.....	12,190.26	
Miscellaneous.....	1,602.15	
Total deductions.....		<u>\$1,324,171.14</u>
Surplus—August 31, 1937.....		<u><u>\$342,904.48</u></u>

During the life of the corporation, dividends have been paid as follows:

Year	Amount
1924	\$93,796.09
1925	57,653.90
1936	302,149.84
1937	188,843.65
Total	<u><u>\$642,443.48</u></u>

[fol. 380] Franchises:

The American Toll Bridge Company holds two franchises granted by the Board of Supervisors of Contra Costa County. One is contained in Ordinance No. 171 covering the Carquinez Bridge, the other is Ordinance No. 175 covering the Antioch bridge.

Ordinance No. 171 was adopted by the Board of Supervisors on February 5, 1923. It provides that it shall become effective thirty days after its passage. Ordinance No. 175 was adopted by the Board of Supervisors on June 4, 1923. It too provides that it shall become effective thirty days after its passage. Ordinance No. 171 granted a bridge franchise to Rodéo-Vallejo Ferry Company, its successors



and assigns, while Ordinance No. 175 granted a bridge franchise to Delta Bridge Corporation, its successors and assigns. As stated, both franchises are now held by American Toll Bridge Company.

Both ordinances provide that the franchise granted by such ordinances is "for a term of twenty-five (25) years, from and after the effective date of the ordinance granting said franchise."

Both ordinances contain the following language:

"It is hereby ordered that at the expiration of term hereby granted the title to said toll bridge shall revert to the Counties of Contra Costa and Solano." (In case of Antioch bridge franchise, the title reverts to Counties of Contra Costa and Sacramento.)

Each ordinance provides that the grantee shall pay a license-tax of \$100. per month payable annually, commencing from date of the operation of the bridges. In addition they shall pay 2% of the gross receipts derived from the use and operation of the bridges for the benefit of the Counties of Contra Costa and Solano in case of the Car- [fol. 381] quinez bridge and the Counties of Contra Costa and Sacramento in case of the Antioch bridge.

[fol. 382] Mr. Rowell: Mr. Coleman, will you in your own words, describe the material which is here set forth in this Exhibit No. 1?

A. This is primarily a factual report. I attempted in the first two or three pages to give a brief summary of the history of the construction up there, the date when incorporated, the date when construction started and was completed, and also to point out the control of the company. There are two companies, as you know—the American Toll Bridge Company is the operating company and the American Toll Bridge Company of California occupies the position of a holding company. Since the inception of the operating company it has been controlled, through stock ownership, by the American Toll Bridge Company of California, through ownership of a substantial part of the outstanding stock. At present the operating company has outstanding and in the hands of the public \$3,719,593 par value

of stock, consisting of shares of \$1 par. Of that amount, \$1,530,036 shares are held by the operating company, or approximately 41 per cent. I am advised the remaining stock is widely distributed over many hundreds of stockholders.

STEWART MITCHELL, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

Mr. Rowell: Will you state your full name?

A. Stewart Mitchell.

Q. Are you now employed by the Railroad Commission?

A. I have been temporarily employed by the California Railroad Commission to assist in the work of obtaining data [fol. 383] with reference to the toll bridges, in accordance with the desire of the Department of Public Works to co-operate in this work, as it will undoubtedly be of benefit to them in their reports to the California Toll Bridge Authority.

Q. Are you permanently in the employ of the Department of Public Works?

A. Yes, sir.

Q. What position do you hold in that Department?

A. I have the grade of senior bridge engineer and in charge at the present time of maintenance and fixing load limits of existing bridges and special investigation work covering our design and construction work.

Mr. Rowell: I ask that this be introduced as Exhibit No. 3, Mr. Commissioner, subject to any objection.

Commissioner Riley: It will be noted as Exhibit No. 3 by the Commission.

(Here follows Exhibit No. 3—pages 1 to 4, inclusive, and 8 to 27, inclusive.)

[fol. 384]

## EXHIBIT 3, BY COMMISSION

## California Railroad Commission

## Transportation Department, Engineering Division

## Study Dealing with Cost of Constructing Carquinez Bridge

Case No. 4259

San Francisco, California, October 23, 1937.

Stewart Mitchell, Senior Bridge Engr., Division of Highways, Dept. of Public Works, State of California.

[fol. 385]

Sacramento, California,

October 23, 1937.

Case No. 4259

Mr. J. G. Hunter, Transportation Engineer, California Railroad Commission, San Francisco, California:

Pursuant to an understanding reached between the Department of Public Works and the California Railroad Commission in connection with Case No. 4259, I have been instructed to prepare a report covering an engineering analysis of the construction of the Carquinez Bridge as it exists today. The purpose of the report, which is attached hereto, is to assist in determining the reasonableness of the actual charges to physical property as shown on the books of the American Toll Bridge Company. In order to obtain a suitable standard by which to measure the reasonableness of the book costs, I have estimated the cost of construction based upon the assumption that sufficient finances were available from the beginning to permit the letting of all major items of work to contract by competitive bids.

The report includes the general outline of the history and progress of construction taken from information found in the company's records, amplified by statements of the company's officials and employees. These data show, in a general way, the reasons for some of the differences which exist between the estimated costs, as shown in this report, and the actual charges to property accounts, as shown in the company's books.

It is my opinion that based upon the program of construction assumed herein, the estimated allowances for construct-

ing the existing bridge represent the fair and reasonable cost of the physical structure. In preparing the estimate I have endeavored to employ all available engineering data which appeared to be in any way pertinent, tempered by my own experience and judgment.

Attention should here be called to the fact that the estimated construction cost does not include any allowance for land or property damage. It is understood that these factors will be taken care of in a later report.

Data upon which the estimated costs were based included that originally collected by the Bridge Department of the Division of Highways when preparing the "Report on Toll Bridges in California," for the State Legislature of 1929. This information has been supplemented since that time by data taken from various sources.

In presenting this report I desire to thank the staff of the California Railroad Commission, the Southern Pacific Company, and other members of the engineering staff of the Department of Public Works who have furnished or assisted in compiling data used in it. I also desire to express my appreciation of the cooperation offered by the management of the American Toll Bridge Company in being willing at all times to open its books and assist in obtaining desired information.

Stewart Mitchell, Senior Engineer, Division of Highways, Department of Public Works.

[fol. 386] 1. General Facts Concerning the Bridge:

The Carquinez Bridge is one of the toll properties owned and operated by the American Toll Bridge Company which was incorporated under the laws of Delaware May 28, 1923. The bridge, located on U. S. Route No. 40, crosses the Carquinez Straits, joins Vallejo in Solano County with Valona and Crockett in Contra Costa County, and forms a link in the California State highway system. The American Toll Bridge Company is the owner of the franchise covering the operation of the bridge by virtue of its owning the entire stock of the Rodeo-Vallejo Ferry Company to whom the franchise was granted by Contra Costa County to be effective March 7, 1923, for a period of 25 years. This company also owns and operates the toll bridge over the San Joaquin River near Antioch by virtue of a franchise granted by Contra Costa County to the Delta Bridge Corporation and later

assigned to it. This franchise, effective July 4, 1923, is also for a period of 25 years. The American Toll Bridge Company on May 1, 1928, purchased the Martinez-Benicia Ferry Company and now operates that ferry along with the two bridges, thus controlling all highway crossings of the Carquinez Straits and lower San Joaquin River. The toll bridge company operates these two toll bridges as one property and apportions the general costs of administration, financing, and taxes between them approximately in proportion to their relative property accounts.

The bridge over Carquinez Straits is a steel structure consisting of two 1100-foot cantilever spans, two 500-foot anchor spans and 1132 feet of viaduct at the southerly end, [fol. 387] making a total length of bridge of 4482 feet. General dimensions and typical features of the bridge are shown in Plate No. 1 which is taken from an article by D. B. Steinman, Consulting Engineer in Engineering News-Record of May 12, 1927.

The bridge over the San Joaquin River near Antioch is located on a State highway and consists of one 320-foot steel lift span, one 320-foot through steel truss span, 2078 lineal feet of steel deck truss spans on steel towers and 1921 lineal feet of reinforced concrete pile trestle making the total length 4639 feet.

The Martinez-Benicia ferry joins the State highways which pass through those two termini and operates one boat with one other boat held in reserve. The ferry was purchased in 1928 for approximately \$138,000.

In addition to the bridges and ferries the toll bridge company owns certain lands, a large part of which are not necessary for the operation of the toll properties.

The following are sources of information for obtaining data relative to cost and earnings for the Carquinez Bridge and other properties of the American Toll Bridge Company.

1. Books, periodical summaries and engineers' diaries and records of the American Toll Bridge Company.

2. Audits by Haskins and Sells, San Francisco, Certified Public Accountants.

3. Files of the Corporation Commissioner of the State of California.



4. Amendment to Registration Statement, filed July 8, 1935, with the Securities Exchange Commission. (In connection with refinancing funded debt.)

5. Federal Income Tax Collector's office, San Francisco, and income tax returns of the toll bridge company.

[fol. 388] 6. Records of Contra Costa County.

For purposes of orientation and reference, the following chronological statement of important events in connection with the history of the American Toll Bridge Company is given:

Rodeo-Vallejo Ferry began operating July 4, 1918.

The Delta Bridge Corporation, original holder of the franchise for the Antioch Bridge incorporated under the laws of California, Dec. 21, 1922.

Twenty-five year franchise granted by Contra Costa County to Rodeo-Vallejo Ferry Company to construct and operate the Carquinez Bridge, Feb. 5, 1923.

Investigation and construction work started on the Carquinez Bridge Apr. 2, 1923.

The American Toll Bridge Company, owning and operating company and the American Toll Bridge Company of California, a stock holding company, incorporated under the laws of Delaware, May 28, 1923.

Twenty-five year franchise granted by Contra Costa County to construct the Antioch Bridge, June 4, 1923.

Construction work started on the Antioch Bridge, March 1924.

American Toll Bridge Company bonds underwritten Apr. 1, 1925.

Antioch Bridge opened to traffic (temporary approach roads) Jan. 1, 1926.

Approach roads completed July 11, 1927.

Carquinez Bridge opened to traffic, with temporary fender system at center pier, May 21, 1927.

Martinez-Benicia Ferry purchased May 1, 1928.

Permanent fender system completed Dec. 2, 1930.

[fol. 389] 3. Construction History and Contracts:

The following historical data has been taken from the records of the toll bridge company. Application was made to the War Department on October 23, 1922, for a permit to build the bridge and the permit was granted April 7, 1923. Surveys and other work of a preliminary nature

were started April 2, 1923, and on July 20 of the same year a small contract for excavating and building approaches to the pier at the north end of the bridge was entered into. The franchise stipulated that construction work should start within four months after the time it was granted.

On October 30, 1923, the toll bridge company employed the firm of Duncanson and Harrellson, San Francisco, on a 6% "cost plus" basis to do foundation investigation work and to start the construction of some of the foundations. Sufficient exploration work was done by November 15, 1923, to allow the design of the major piers and the superstructure to proceed and plans of the bridge were rushed to completion by January, 1924. In general, the work carried on by Duncanson and Harrellson covered the construction of the southerly viaduct piers Nos. 9 and 12 inclusive; the cofferdam, foundation pile driving and pouring of seal course for Pier No. 4 and construction of a caisson for use at Pier No. 3.

At this time, it appears from the records that construction work was being financed through stock sales, earnings of the Rodeo-Vallejo Ferry Company and probably the personal fortunes of the organizers of the toll bridge company.

Difficulties arose which interfered with the sale of stock and it was soon evident that additional finances would [fol. 390] have to be obtained if the bridge was to be completed and opened to traffic within a reasonable length of time. Officials of the toll bridge company have stated that considerable difficulty was encountered in borrowing money to complete the project and that financial interests were hesitant to undertake its financing until the company had invested a considerable amount of its own money and carried the work to a point which indicated its general feasibility. In April 1925, first and second mortgage bonds to the amount of \$6,500,000 were sold which made it possible to let the remainder of the construction work to contract under conditions of competitive bidding to large and responsible contractors.

Reference is here made to the chart (Plate No. 2) which shows the progress of construction work on various major units of the bridge taken from the engineers' construction records. As has been stated, work up to April 1925, was generally carried on upon a force account basis and in-

cluded the completion of some of the viaduct footings on dry land at the southerly end of the bridge; the fabrication of two caissons for Pier No. 3 located in the deep water of the Straits; and, the placing of a cofferdam, excavating to the proper depth, driving the foundation piles and placing a concrete seal course at Pier No. 4. In constructing this pier, the base of which was 50 feet below the water surface, a cofferdam of untreated timber sheet piling was constructed. Likewise, untreated lumber was used in the outer walls of the caissons to be sunk into place at Pier No. 3. It will be noted that this work stopped along in December 1924, and remained at a standstill for about six months until the bonds were underwritten and the Missouri Valley Bridge and Iron Company (who [fol. 391] took the contract to complete the foundation work in May, 1925) started active operations.

Due to this enforced delay which it is understood was caused by lack of finances, teredo had time to work on the untreated timber of the cofferdam erected at Pier No. 4 and practically destroyed its usefulness. The Missouri Valley Bridge Company apparently tried to complete the pier by only partially reconstructing and repairing the existing cofferdam but were unable to make it watertight. They were finally forced to drive an entirely new wall of sheet piling, remove the old and fill in between with additional concrete seal. The cost of constructing the original cofferdam wall, the attempt to repair it and its removal and replacement with additional concrete seal must be considered abnormal and the result of financial or other conditions beyond proper engineering control. The records of the company show that an estimate of \$125,000 to repair the damage to this pier was made at the time the Missouri Valley Bridge Company started operations. It is understood, also, that due to the delay in placing and sinking the caissons, shrinkage of the timber caused considerable difficulty from leakage and such extra cost must be attributed to the conditions connected with financing the work.

Table No. I which follows, lists contracts let in connection with the construction of the bridge. It will be noted that the list includes a contract with the Raymond Concrete Pile Company, which covered the construction of the foundations and that this contract was entered into previous to the arrangements being made for financing the [fol. 392] remaining construction work. It is understood

the work was sub-let by them to the Missouri Valley Bridge Company but later (April, 1925) the contract was abrogated and the work let directly to that company. The books show a payment to the Raymond Concrete Pile Company of \$50,000 in settlement of a claim or suit resulting from this contract. It appears that the obtaining of sufficient finances to complete the project made it beneficial to the toll bridge company to re-let this work.

In November, 1925, a contract was let to the United States Steel Products Company for furnishing and erecting the steel superstructure of the bridge and Duncanson and Harrellson were awarded a contract in March, 1927, for placing the concrete floor over the structure. These contracts were all on a "lump sum" basis.

Piers Nos. 2, 3a and 3b are located in the deep channel of Carquinez Straits where the current is swift and, due to its scouring action, the water is deep with comparatively shallow overburden over the rock or other hard material upon which these piers are founded. The piers being relatively narrow in proportion to their height, received relatively little lateral support from the shallow depth of material surrounding them. A considerable amount of rock fill was placed around these piers by contract let to Healy-Tibbits Company previous to the opening of the bridge to traffic.

Piers No. 3a and 3b were in danger of being struck by boats travelling up and down the Straits and, with the approval of the War Department, a fender system consisting of four ships securely anchored in suitable positions was installed. This work was done about the time the [fol. 393] bridge was opened to traffic. Opposition of shipping interests apparently caused the War Department to require a more extensive type of fender, and an elaborate structure, plans of which are on file, was designed and built. Rock was placed around the piers to a level 54 feet below the water surface or some 70 feet above the base of the piers thus affording considerable lateral stability. Into this rock filling, concrete piles were driven which supported the concrete fender, the contract for the concrete work being let to Healy-Tibbits Company, August 29, 1929, and completed December 2, 1930.

The cost of this rock fill and fender was financed from the earnings obtained through operating the bridges owned by the company.

Carquinez Bridge

Table No. I.

Major contracts awarded in connection with construction of the bridge and total payments to contractors as shown on the books of the American Toll Bridge Company.

Date	Contractor	Work Done	Cost	Remarks
8/ /23	Thos. C. McGill	Approaches to Pier No. 1	\$10,201.60	
10/ 8/23	Duncanson and Harrellson	Excavation, Pier No. 1	1,094.32	
11/15/23	Raymond Concrete Pile Co.	Exploration and pier foundations	655,580.36*	Cost +6%
1/29/25	Mo. Valley Bridge & Iron Co.	Pier foundations	110,023.52**	Lump Sum
4/27/25		"	1,400,896.86	
10/30/25	Blake Bros. Co.	(Completing)	16,763.29	
4/30/25	Daniels Contr. Co.	Furnish aggregate	47,719.28	
7/ /25	U. S. Steel Products Co.	Steel superstructure	33,639.49	
5/11/25	Duncanson and Harrellson	Concrete floor (roadway)	2,086,854.47	
1/ 4/27	E. L. Soile Co.	Reinf. steel	108,327.78	
11/ 4/28	Healy-Tibbitts Co.	Rock filling (riprap)	27,316.02	
7/ 9/26			39,361.92	-83¢/ton
3/19/28	Sub-Total		\$5,137,779.51	
8/29/29	Healy-Tibbitts Co.	Furnish rock for fill at fender		75¢/ton
		Concrete fender	\$329,447.68	

\* Includes \$43,286.80 for exploration work.  
\*\* \$50,000.00 paid in 1928 for settlement of suit.

(Here follows 1 photolithograph, side folio 395.)

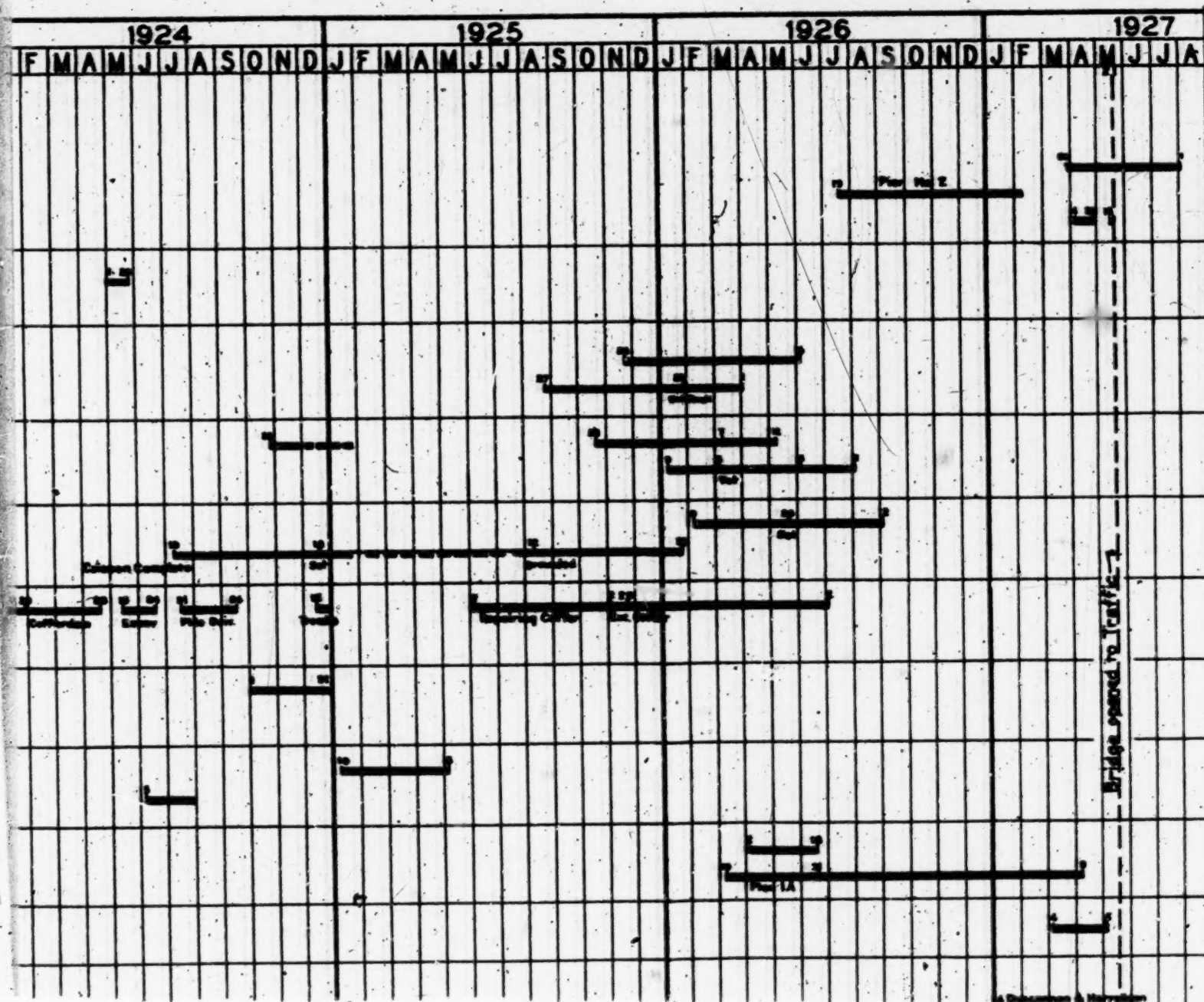
1923											
J	F	M	A	M	J	J	A	S	O	N	D
SURVEYS & EXPLORATION											
APPROACHES											
TOLL HOUSE, ETC.											
RIP-RAP											
TEMPORARY FENDER											
PIER NO. 1											
PIER NO. 2-E											
W											
PIER NO. 3A-E											
W											
PIER NO. 3B-E											
W											
PIER NO. 4											
PIER NO. 5											
PIERS NOS. 6-8 INC.											
9-12											
STEEL-VIADUCT											
-CANTILEVER SPANS & TOWERS											
CONCRETE FLOOR											
CONTRACTORS:-											

CARQU

Detail plans completed



## QUINEZ BRIDGE PROGRESS SCHEDULE



Permanent Fender;  
Contract 8-29-'29  
Completed 12-2-'30  
— Healy-Tibbets Co.

Don seemed to Traffic-

### La Discontinua di Maltredden

**SURVEYS & EXPLORATION  
APPROACHES  
TOLL HOUSE, ETC.  
RIP-RAP  
TEMPORARY FENDER**

**PIER NO. 1**

**PIER NO. 2-E  
W**

**PIER NO. 3A-E  
W**

**PIER NO. 3B-E  
W**

**PIER NO. 4**

**PIER NO. 5**

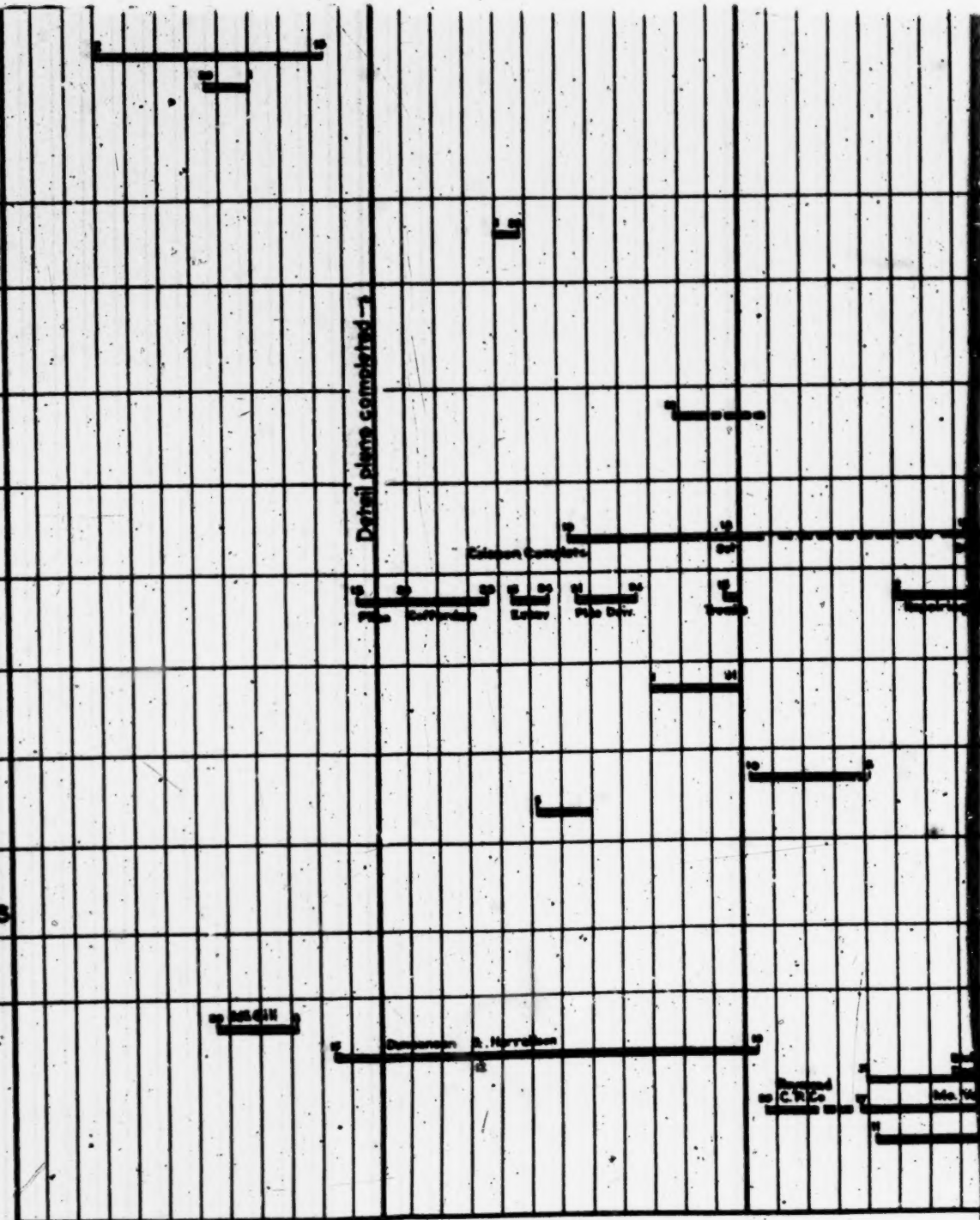
**PIERS NOS. 6-8 INC.  
9-12**

**STEEL-VIADUCT  
-CANTILEVER SPANS & TOWERS**

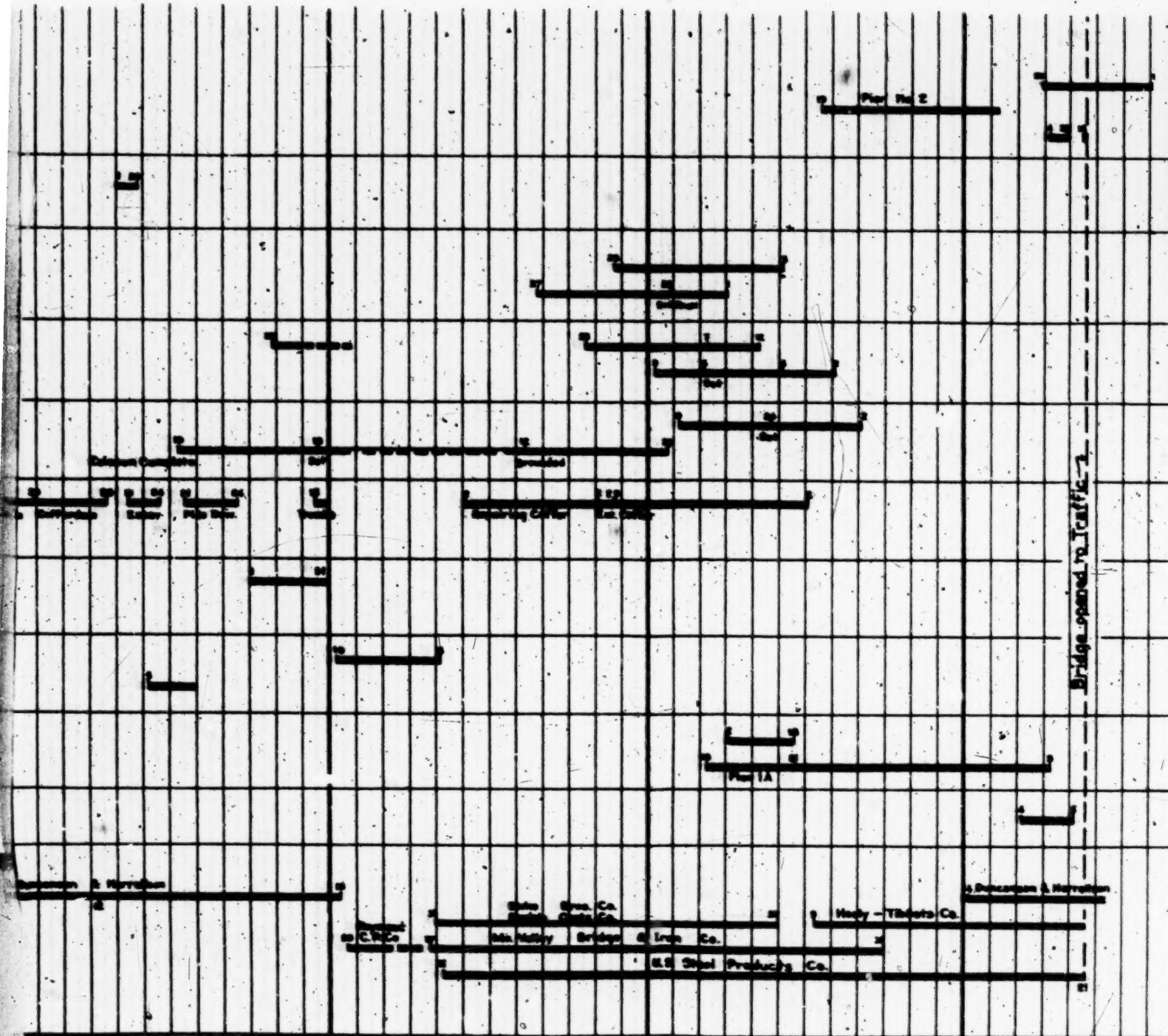
**CONCRETE FLOOR**

**CONTRACTORS:-**

Detail plane completed - 1



Permanent Fender:  
 Contract 8-29-29  
 Completed 12-2-30  
 - Healy-Tibbets Co.







[fol. 396] 4. Analysis of Construction Costs:

As has been stated, all contracts for the construction of the Carquinez Bridge were let on a "cost plus" or a "lump sum" basis. No data is available segregating the total cost to major units or classes of work which comprise the bridge. In order to be able to form an opinion as to the reasonableness of the unsegregated book charges against construction work connected with the bridge, there has been prepared an estimated cost of constructing each of the major units of the bridge at prices in effect at the time of construction, but on the assumption that all the work had been let to responsible contracting firms through competitive bidding.

a. Piers and Foundations:

In the construction of the substructure the major item is the cost of the deep water caissons for Piers No. 2, 3a and 3b. In estimating the cost of caissons, a study has been made of the detailed costs of caissons for the San Francisco-Oakland Bay Bridge and the Martinez-Benicia Bridge which data was kindly furnished in considerable detail by the Department of Public Works of the State of California and the Southern Pacific Company. Unit costs for these structures have been modified in accordance with the costs of labor and material in effect at the time each project was built and to allow for differences in physical conditions under which the work at the Carquinez Bridge was carried on. The unit cost of concrete, reinforcing steel, foundation piling, etc., in place, has been estimated using the cost of material and contract labor in effect at the time the structure was built. Table No. II following this gives the estimated costs of the piers and substructure based on quantities [fol. 397] ties taken from the bridge plans and engineering records to which the unit costs referred to above have been applied.



[fol. 398]

## Carquinez Bridge

## Table No. II

## Sheet 1 of 3

Estimated Cost of Constructing the Bridge in 1925-1926 with Sufficient Finances to Permit Letting to Contract by Competitive Bidding

## 1. Piers and Foundations:

## Pier No. 1 (north abutment):

1,020 cu. yds. excav.	at 1.00	\$1,020
575 concrete	14.00	8,050
5,099 lbs. reinf. steel	.045	230

Total Pier No. 1..... \$9,300

## Pier No. 2:

13,048 cu. yds. gross vol. of 2 caissons	at 28.00	365,344
12,000 sq. ft. removable cofferdam	1.20	14,400
1,904 cu. yds. concrete in piers	14.00	26,656
23,594 lbs. reinf. steel	.045	1,100

Total Pier No. 2..... 407,500

## Piers Nos. 3a and 3b:

These piers are practically duplicates of Pier No. 2

Average elevation of bottom of foundations are:

Pier No. 2	-128.4
Pier No. 3aW	-129.7
Pier No. 3aE	-131.7
Pier No. 3bW	-131.5
Pier No. 3bE	-130.6

Average..... -130.4

This average elevation has been used to compute gross volume of caisson for Pier No. 2 and same total cost used for all piers.

Cost of Piers Nos. 3a and 3b—twice the cost of Pier No. 2..... 815,000

Sub-total, forward..... \$1,231,800

[fol. 399]

## Sheet 2 of 3

## Brought forward.....

\$1,231,800

## Pier No. 4:

## Cofferdam—52' x 147'

Driving 320—12" x 15" wood sheet piles	at 10.00	\$3,200
Piling 340 MBM	60.00	20,400
Waling 200	80.00	16,000
Excavating (-25' to -30')		
6,000 cu. yds.	1.00	6,000
Unwatering and pumping		400
General expense 20%		9,200
Overhead and profit		5,500

Total..... 60,700

R. C. piling 14,625 lin. ft.	at 3.60	52,650
Timber " 6,500 "	0.60	3,900
Concrete, seal 3,130 cu. yds.	13.00	40,690
pier 5,190 "	14.00	72,660
Reinf. steel 88,900 lbs.	.045	4,000
Rail steel 133,600 "	.02	2,670

Total..... 237,270

## Pier No. 5:

Excav. 400 cu. yds.	at 12.00	4,800
Concrete 983 "	14.00	13,760
Reinf. steel 8,900 lbs.	.045	400
rail steel 20,700 "	.02	420
Timber piles 6,000 lin. ft.	.60	3,600

Total..... 22,980

Sub-total, forward..... \$1,492,050

[fol. 400]

## Sheet 3 of 3

Brought forward			\$1,492,050
Piers No. 6 to 8 incl. (12 footings):			
Excav.	1,000 cu. yds.	at 1.00	\$1,000
Concrete	1,128 "	" 14.00	15,790
Reinf. steel	15,600 lbs.	" .045	700
Timber, piling	17,640 lin. ft.	" 60	10,580
Total			28,070
Piers Nos. 9 to 11 incl. (8 footings):			
Excav.	150 cu. yds.	" 1.00	150
Concrete	232 cu. yds.	" 14.00	3,250
Reinf. steel	3,000 lbs.	" .045	140
Total			3,540
Pier No. 12 (south abutment):			
Excav.	150 cu. yds.	" 1.00	150
Concrete	191 "	" 14.00	2,680
Reinf. steel	4,200 lbs.	" .045	190
Total			3,020
Riprap, Piers Nos. 2 and 3, actual expense by Co. records			39,362
Total construction costs for piers and foundations			1,566,042
To which should be added a reasonable allowance for extra work and changes in plans, est. at 5%			78,302
			1,644,344
Exploration of foundations, actual expense by Co. records			43,286
			\$1,687,630

The payments to contractors on piers and foundations, which appear to cover all the items contained in the above estimate, is \$2,305,079 or \$617,449 more than is estimated. In order to account for this difference reference is made to the construction history wherein it is pointed out that the early work on foundations had to be carried on by force account, without definite plans and subject to delays from lack of finances, which latter resulted in considerable loss of work already done, notably in connection with Pier No. 4.

## [fol. 401] b. Superstructure:

In making an estimate of the cost of the structural steel, the following total weights were taken from engineers' figures furnished in 1929 by Geo. J. Calder, then Vice President and General Manager of the American Toll Bridge Company:

Approach viaduct	3,343,270 lbs.
Towers, cantilever spans	3,481,500 "
Anchor and cantilever spans	17,095,910 "
Suspended spans	2,980,320 "
Hand rails	500,000 "
Piers Nos. 2 and 3	255,600 "
Total	27,656,600 "

These weights have been divided into kinds of steel in proportion to preliminary figures given by D. B. Steinman, Designing Engineer (See Engineering News-Record, May 12, 1927), and unit prices applied as follows:

Structural grade	14	239,190 lbs.	at	8.9	=	\$1,267,288
Silicon	10	317,500 "	"	10.3	=	1,062,702
Eve-bars heat treat	2	848,000 "	"	11.4	=	324,673
struct		251,910 "	"	7.15	=	18,012
		27,656,600				\$2,672,675

The actual payment for this work, as given on the books of the company, is \$2,686,854 for contract work let by competitive bidding. The above estimate is a close enough check of the actual cost figure to establish its reasonableness. This work was let to contract by competitive bids.

The estimated cost by items of the concrete bridge floor shown on the books as costing \$108,328 paid to the contractor, plus \$27,316 paid for reinforcing steel is:

3,569 cu. yds. concrete	at	\$20.00	\$71,380
965,000 lbs. reinf. steel	at	.045	43,425

Total floor ..... \$114,805

[fol. 402] The book figures covering contract payments apparently chargeable to this item appear, from the above estimates, to be rather high. The difference is, of course, a relatively small amount as compared to the total cost of construction.

#### c. Miscellaneous Construction Work:

This work includes the construction of necessary bridge approaches, toll collecting facilities and office building, and a suitable fender system.

The expense for the approaches was partly composed of contributions to Joint Highway District No. 7 and to Solano County. On the books of the company is shown a separate account for approaches totalling \$25,121, and in Construction Work is an item covering a contract let to T. C. McGill for approaches to pier No. 1 amounting to \$10,202. The sum of these costs, amounting to \$35,323, is relatively small and was apparently necessary to develop access to the toll bridge.

Included in the actual book cost of the bridge is an item for buildings amounting to \$28,500, of which \$11,460 is ap-

parently for revenue producing properties, the returns from which are additional to revenue from tolls. The difference, or \$17,094, represents the cost of toll house and garage and is apparently a reasonable charge against the toll bridge.

An estimate of the cost of reproducing the existing concrete fender around piers Nos. 3a and 3b, based on quantities taken from preliminary plans accompanying application to the War Department and dated July 16, 1927, is as follows:

(fol. 403)

Piling, R. C.	27,000 l. f.	at	4 00	\$148,000
Timber stub piles	40 MBM	at	80 00	3,200
Concrete	4,330 c. y.	at	22 00	95,260
Reinforcing Steel	500,000 lbs.	at	045	22,500
Sand (cushion)	3,200 c. y.	at	1 50	4,800
Rails, plate, etc.	136,000	at	0	5,440
Structural box girders	400,000 lbs.	at	075	30,000
Cast Iron	15,000 lbs.	at	14	2,100
				\$311,300
Contingencies				15,505
				\$326,805

The actual cost of the concrete fender which was let to contract by competitive bids was \$329,448, and the above estimate indicates that the actual cost is a reasonable one. The rock for the fill was furnished at the site by contracts let to Healy-Tibbitts Company and Daniels Contracting Company at a unit price of 75c per ton. The rock was placed in position through a 3-foot pipe under the supervision of the engineers of the company and with the use of company equipment. The exact amount of rock placed could not be obtained at this time but it is stated in the annual report to stockholders, dated April 2, 1929, to amount to 150,000 tons approximately. Using this figure and estimating the cost of placing the rock at 45c per ton, the total cost of this item is:

150,000 tons at \$1.20 = \$180,000.

The total cost of existing fender is, therefore, \$509,448 against a total charge for fenders on the company's books of \$625,103. The difference of \$115,655 is presumably the expenditure necessary for setting up, moving, and removing a temporary fender system. This analysis has in mind only the checking of the cost of constructing in order to repro-

since the existing structure, using prices in effect at the time it was built. Therefore, the cost of the temporary tender works has not been analyzed.

[fol. 404] 3. Overhead Costs:

The determination of what are reasonable allowances to be added to the estimated physical costs of the project is a matter involving many factors. In addition to an allowance to cover the costs of engineering, there also must be made an allowance for legal and financial expenses connected with the initial promotion and the financing of the project. This subject has been given such consideration as this has permitted and it further study indicates that the overhead allowances set up herein should be modified, and, possibly, such study may be submitted at a later hearing of this proceeding.

Overhead expenses are generally grouped under the following heads:

a. Engineering expense, which includes the preparation of plans and specifications; the costs of letting to contract, procuring surveys and investigations, laying out and effecting construction, inspecting and testing materials, keeping engineering records and making reports.

b. Interest paid or lost during construction, covering the total cost of money borrowed or tied up during the period of construction.

c. General expenses which include salaries and expenses connected with the managing and financing of the project during construction, insurance, injuries and damages, legal fees, taxes, etc., for the same period.

d. Preliminary expenses of organization and promotion. This is taken to include the cost of selling stock as well as the cost of obtaining franchises, incorporation, etc.

[fol. 405] a. Engineering Expense:

Mr. J. A. L. Waddell, in his book "Bridge Engineering," 1916, states that 6% is a proper allowance for engineering costs on large bridges, including the costs of inspecting and testing materials, and making a preliminary investigation and economic studies not including boring test



total. In the actual estimate of construction the piers had foundations. An allowance for foundation exploration work has been included. They charge against bridge work on the part of the company also amount to approximately 6% of construction cost. The cost of many large publicly constructed bridges in recent years have cost less than 6% and it may be considered proper in this case. If it is taken into account such additional costs as are necessary in connection with the promotion of privately financed business and is taken into account when estimating organization expenses. The assumption that work was let under conditions of competitive bidding also leads to the conclusion that the period of construction would have been factually shorter under such conditions. It is, therefore, in keeping with these assumptions that a smaller cost of financing may result from applying 6% to the estimated cost of construction, which is less than the 5000 cost.

#### 10. Interest During Construction

In the above estimated construction cost, the premise has been taken that the work could be let by competitive bidding. In this case it is believed that the work could have been started not earlier than November 30, 1924, and finished at the actual time the bridge was opened to traffic. On this basis the following appears to be a reasonable schedule for financing the construction work:

(Table 400)

From Nov. 30, 1924 to May 31, 1925	\$800,000
May 31, 1925 to Nov. 30, 1925	700,000
Nov. 30, 1925 to May 31, 1926	2,000,000
May 31, 1926 to Nov. 30, 1926	1,000,000
Nov. 30, 1926 to May 21, 1927	1,000,000
(to date of opening)	0
May 21, 1927 to May 21, 1928	400,000
(fender work only)	
	<hr/>
	\$5,900,000

In estimating the cost of interest during construction, it has been assumed that money would be provided at the beginning of the project and would cost 8%. Also, that funds on deposit during construction, based upon the above financing program, would draw interest at the nominal rate

of 3%. The total cost of interest during construction on this basis amounts to \$313,563.

### c. General Expense:

A study of a number of previous cases which have been before the California Railroad Commission shows that percentages running from 1.75% to 6.50% have been used to cover general costs of legal expense, injury and damages, and miscellaneous charges including salaries, head office expenses, insurance, etc. It is believed that 4% is a reasonable percentage to be used in the present case. The books of the company show an expense for \$11,690.62 covering taxes and license fees, and as this appears to be a reasonable figure for costs necessarily incurred, it is added to the above. The total general expense on this basis is \$220,571.

### d. Preliminary Expense of Organization and Promotion:

This item includes the discount upon sales of stock which, under the authority of the Corporation Commissioner, was sold to the public for \$2.00 per share to net the company \$1.00 per share. The cost of these commissions for the sale of 140,711 of such stock is given on the books of the company as \$148,823.80. It appears that this amount should be allowed as a part of the cost of the property, and in addition there should be an allowance to cover general and legal expenses of incorporation and organization. In Decision No. 8511, C. R. C. No. 19, page 243, the Commission has given its opinion with regard to a proper percentage rate to cover these costs in the case of a ferry company. Using this opinion as a criterion, and considering the statement made above as to engineering costs for promotion and organization work being included in the allowance for construction engineering, it is believed that 21.2% would be a reasonable percentage in this case. The total allowance for preliminary expense is, therefore:

Commissions on stock sales (actual)	\$148,824
21.2% of cost of construction	126,800
	<hr/>
	\$275,624

[Col. 408-409]

## Recapitulation

Item	Book Accts. allocated to the item	Estimated Costs in this Report
Piers and foundations	\$2,305,078.64	\$1,687,630
Superstructure	2,822,498.87	2,822,499
Tollhouse	17,092.77	17,093
Other Buildings	11,460.76	
Approach work and contributions	35,322.70	35,323
Sub-total, Construction Work prior to opening to traffic	\$5,491,453.74	\$4,562,545
Existing tender system and misc.	625,402.79	500,448
Total Construction Cost	\$5,816,556.53	\$5,071,993
Construction Engineering	390,076.11	304,320
Interest during construction	688,092.56	313,563
General Expense	492,018.27	220,571
Preliminary Expenses	476,707.70	275,624
Total	\$7,863,451.17	\$6,186,071

[Col. 410] Mr. Rowell: Will you describe the material contained in this exhibit in such detail as you think desirable, Mr. Mitchell?

A. The report covers an engineering analysis of the construction work of the Carquinez Bridge as it exists at the present time. The purpose of the report was to assist in determining the reasonableness of and checking the book costs of construction. And in order to obtain a suitable basis for doing this I have estimated the cost of the bridge as it exists today at prices which were in effect at the time it was built and on the premise that all the major items of the work were let by contract under competitive bidding conditions and to responsible contractors. I may explain at this time that the accounts of the Toll Bridge Company do not break down the construction cost except to list the contracts, which list I have included in this report, and that also the contracts themselves were either on a cost plus basis or lump sum and not broken down into bids or units of the construction, in other words. Therefore, in order to check the cost it seems logical to build up an estimated cost of the construction under the same conditions. And, in order to do so it was necessary to base this cost on some premise, as the one I have chosen, that there were sufficient finances available at the beginning of the project to permit the letting of all the major items to contract by competitive bidding.

I have also included in the report a general history of the construction of the bridge, in which is shown, as far as I

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have been able to obtain from the records of the Company and in talking to its officials, the actual occurrences in connection with contract work. It will be noted, of course, that in comparing—or, first, I want to state that, along with the estimated costs which I have prepared, I have shown in the final tabulation in the report the book costs which, as near as I could ascertain, are comparable with the portion of the work which I have estimated. It will be noted that there are some important differences. These may be pointed out. First, in the case of construction work on the piers and foundations, there is a material difference.

Q. To which page are you referring now?

A. Referring now to page 27, the final tabulation in the report. Also in the case of the existing fender system, a difference, and in the overhead costs. The construction history I think points out the reason for a considerable portion of the difference with regard to piers and foundations, that is, that the extra cost incurred by the Company was largely due to delays which, in turn, were the result of lack of finances to prosecute the work in an efficient manner. In the case of the fender system, there was a temporary fender system installed previous to the fender that is there at the present time. And I have been unable to break down this cost and, as I have said, predicated my estimate upon reproducing what is there at the present time.

Q. In other words, you have estimated what you considered the reasonable cost of the fender which is in place today without including the preliminary fender?

A. That is correct.

From that we go on to the construction history and connection with [fol. 412] tracts which I have referred to before. This work, of course, as the general history shows, was started with the idea of financing it through the sale of stock to the public. Considerable difficulty resulted in selling stock and it was necessary to change the financing to the other interests held by the organizers of the American Toll Bridge Company. I should say that it has been stated by the Company officials it was impossible to obtain money to complete the entire project until a certain amount of experimental work had been done by the Company and they had con-



tributed a certain amount of their own funds. It was, therefore, in April, 1925, some 2 years after the initial start of construction on the bridge, before money was available to let the work to large contractors on a basis of competitive bidding.

Mr. Rowell: Have you included any allowance for property damage, acquisition of rights of way, and such items?

A. No, the report states that no allowance at this time has been made for right of way and property damages. That is being investigated at the present time and I understand will be submitted in a later report in this case.

---

STEWART MITCHELL recalled.

Direct examination resumed:

Mr. Rowell: You have prepared an exhibit which was introduced at the last hearing as Exhibit No. 3, have you not?

A. Yes, sir.

Q. Have you any corrections or changes to make in that exhibit?

A. It was stated in the previous report that the question [fol. 413] of construction costs had been pretty thoroughly covered and an exhaustive study made, but that in connection with the overhead charges the time was somewhat limited and it was expected that it would be given further consideration. And a further check of these costs indicates that a further study in regard to interest during construction would be advisable, and I have included such a study in a new report to be submitted at this time.

Mr. Rowell: We offer that exhibit in evidence at this time.

Commissioner Riley: There being no objection, it will be received as Commissioner's Exhibit No. 16.

(Here follows Exhibit No. 16—pages 1 to 13 (ending with "amounted to \$688,092.56") and 15, 16, 17, 19, inclusive.)

[fol. 414] EXHIBIT No. 16. BY THE COMMISSION

California Railroad Commission

Transportation Department, Engineering Division.

## Study Dealing With

1. Cost of Reproduction, New
2. Misc. Physical Costs.
3. Interest During Construction for the Carquinez Bridge.

Case No. 4259

San Francisco, California, November 30, 1937.

Stewart Mitchell, Senior Bridge Engineer, Division of Highways, Department of Public Works, State of California.

[fol. 415] I. Reproduction Cost New of the Carquinez Bridge

The following report covers the estimated reproduction cost new of the Carquinez Bridge if completed November 30, 1937, with sufficient finances to permit letting all work by contract to competitive bidders. Wages and prices of many construction materials are generally higher today than at the time this bridge was constructed, but the developments of engineering knowledge and construction methods along this line would more than counteract the increased cost resulting therefrom.

The Carquinez Bridge was one of the first in a phase of long span bridge construction in the United States, and the first structure to be built across any portion of San Francisco Bay. Its location was adjacent to an active fault plane, its foundations were at that time among the deepest ever constructed and their construction was further complicated by the deep water and strong tidal currents. The method used to float the suspended spans into position and raise them into place had resulted in the loss of one such span when tried at the Quebec Bridge and though here accomplished without difficulty, the previous experience presented a definite hazard. These uncertainties affected

the actual costs of the structure, and would naturally have been reflected in the bid costs under any system of financing at that time.

[Vol. 416] Since the construction of the Carquinez Bridge, a great number of long span bridges have been built throughout this country. Construction methods have been improved and standardized through experience. Several major structures have since been completed across various portions of the San Francisco Bay, including the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge. These two bridges have longer spans and deeper foundations than the Carquinez Bridge. Plants in the San Francisco Bay area have been established or equipped to fabricate structural steel in quantities sufficient for a bridge of almost any size. Furthermore, at least one local company has developed large scale production and delivery of mixed concrete and equipment for its plants. Most of the recent major bridge work is available. All these factors join in counteracting the generally higher steel and material prices today.

#### Substructure:

Unit costs were determined through comparative studies of recent California Division of Highway contracts and bid prices on recent major bridge contracts throughout the country. The unit cost of the caissons per cubic yard of gross volume as determined in the previous report for the caissons of like depth on the San Francisco-Oakland Bay Bridge and on the Southern Pacific Company's Martinez-Bericia Bridge have been modified to conform to 1934-35 prices and the use of present day methods and equipment. Concrete costs are based on the 1934-35 price of mixed concrete in San Francisco. The cost of timber piles in place is based on recent bids, including the recently advertised railroad facilities for the San Francisco-Oakland Bay Bridge and the Port of Oakland connection, adjusted to conform to the relative magnitude of the projects.

Though concrete can be produced at a lesser cost today, slight increases in the costs of substructure steel and timber piles tended to balance this saving and the estimated cost of the substructure is found to be approximately the same as that estimated for 1925-26 construction.

### Superstructure:

Unit prices for structural steel have been built up from a consideration of all items which enter into the finished cost of this job, and by comparison with recent bid prices on the larger projects. Though the base price of carbon steel has been higher during 1936-37 than during 1925-26, premiums on special steels were higher at the time the structure was built so that the base price used here for silicon steel is practically unchanged. In the case of heat treated eye-bars, the cost is considerably less. However, the hazards and uncertainties referred to above undoubtedly were reflected in the actual costs of structural steel when the bridge was constructed, and this factor, together with improved local facilities, should make a small net reduction in steel costs. [fol. 418] at the present time.

Furthermore, improved methods of construction would also reduce erection costs today. The south approach trestle was originally constructed on high falsework bents founded on piles. This falsework represented a major portion of the erection cost. Light trusses of this length would probably be constructed on the ground and hoisted into place with present day equipment.

Cheaper concrete prices today should effect considerable saving as compared to the original cost of the concrete bridge deck. On account of all the above factors the total estimated cost of the superstructure at the present time is found to be somewhat less than the original cost.

### Miscellaneous Construction:

The estimated cost of the fender system and the rock fill is found to be virtually the same as that estimated for 1925-26 construction. Here again lower concrete prices are balanced by the higher prices of reinforcing and other steel.

The tollhouse and garage are estimated at a lump sum of \$20,000 as compared to the actual cost of \$17,093 due to relative prices in general building construction work.

The length of approaches that might have to be paid for under present day conditions is indefinite. The existing approaches to the bridge have been constructed or improved [fol. 419] proved by the State with public funds and no

more than actual costs shown on the company's books for this item can be included.

To all construction items, except approaches, an addition of 3% is made to cover unforeseen conditions and changes during construction.

### Overhead Costs:

The percentages set up to cover overhead costs in the previous estimated cost of constructing the bridge in 1925, with sufficient finances to permit letting to contract by competitive bidding should apply in general to the cost of reproduction new. Six per cent of the total construction cost is again allowed for engineering expense and four per cent is allowed for general expense and in addition the actual book charge of \$17,691 for taxes and license fees. Two and one-half per cent of the construction cost is further added to cover the preliminary expense of organization and promotion, but the original cost of selling stock is omitted since the schedule of interest during construction used herein assumes that the project is to be financed entirely by the sale of bonds.

(Vol. 420)

Estimated Cost of Reproducing the Carquinez Bridge New as of 1936 and 1937

#### Substructure:

##### Pier #1:

Excavation	1,020 c. y.	at 1.00 =	\$1,020	
Concrete	575 c. y.	" 13.50 =	7,763	
Reinf. Steel	5,099 lbs.	" 0.05 =	255	\$9,038

##### Pier #2:

(Considered average depth of Piers 2, 3a & 3b)

Gross vol. caissons	13,048 c. y.	at 28.00 =	\$365,344	
Removable Cofferdam	12,000 s. f.	" 1.20 =	14,400	
Concrete (piers)	1,904 c. y.	" 13.50 =	25,704	
Reinf. Steel	23,794 lbs.	" 0.05 =	1,180	\$406,628

Piers #3a and 3b (Same as Pier #2)

\$813,256

##### Pier #4:

Cofferdam 52' x 147'				\$51,000
Excavation	6,000 c. y.	at 1.00 =	6,000	
R. C. Piling in place	14,625 l. f.	" 3.60 =	52,650	
Timber Piling in place	6,500 l. f.	" 0.75 =	4,875	
Concrete (seal)	3,130 c. y.	" 11.00 =	34,430	
Concrete (pier)	5,190 c. y.	" 13.50 =	70,065	
Reinf. Steel	88,900 lbs.	" 0.05 =	4,445	
Rail Steel	133,600 lbs.	" 0.03 =	4,008	\$227,473

Sub-total forward

\$1,456,395



# Estimated Cost of Reproducing the Carguinez Bridge New as of 1936 and 1937—Continued

[fol. 421]

Brought forward.....					\$1,456,895
<b>Pier #5:</b>					
Excavation.....	400 c. y.	at 12.00 =	\$4,800		
Concrete.....	983 c. y.	" 13.50 =	13,270		
Reinf. Steel.....	8,900 lbs.	" 0.05 =	445		
Rail Steel.....	20,700 lbs.	" 0.03 =	621		
Tim. Piles in place...	6,000 l. f.	" 0.75 =	4,500		
					\$23,636
<b>Piers #6 to #8 Inclusive:</b>					
Excavation.....	1,000 c. y.	at 1.00 =	\$1,000		
Concrete.....	1,128 c. y.	" 13.50 =	15,228		
Reinf. Steel.....	15,600 lbs.	" 0.05 =	780		
Tim. Piling.....	17,640 l. f.	" 0.75 =	13,230		
					\$30,238
<b>Piers #9 to #11 Inclusive:</b>					
Excavation.....	150 c. y.	at 1.00 =	\$150		
Concrete.....	232 c. y.	" 13.50 =	3,132		
Reinf. Steel.....	3,000 lbs.	" 0.05 =	150		
					\$3,432
<b>Pier #12:</b>					
Excavation.....	150 c. y.	at 1.00 =	\$150		
Concrete.....	191 c. y.	" 13.50 =	2,579		
Reinf. Steel.....	4,200 lbs.	" 0.05 =	210		
					\$2,939
Riprap Piers #2 and #3.....					\$40,000
Exploration of Foundations.....					\$45,000
<b>Total Substructure.....</b>					<b>\$1,601,640</b>

[fol. 422]

<b>Superstructure:</b>					
<b>Steel:</b>					
Struct. Car. steel.....	14,491,100#	at 0.085 =	\$1,231,743		
Struct. Sil. steel.....	10,817,500#	" 0.09 =	928,575		
Heat tr. eyebars.....	2,848,000#	" 0.095 =	270,560		
					\$2,430,878
<b>Concrete Floor:</b>					
Concrete.....	3,569 c. y.	at 18.00 =	\$64,242		
Reinf. Steel.....	965,000 lbs.	" 0.05 =	48,250		
					112,492
<b>Total Superstructure.....</b>					<b>\$2,543,370</b>

## Miscellaneous Construction Costs:

### Fender:

R. C. Piling in place.....	37,000 l. f.	at 4.00 =	\$148,000		
Tim. stub. piles.....	40 MBM	" 80.00 =	3,200		
Concrete.....	4,330 c. y.	" 20.00 =	86,600		
Reinf. Steel.....	500,000 lbs.	" 0.05 =	25,000		
Sand (cushion).....	3,200 c. y.	" " =	4,800		
Rails, plate, etc.....	136,000 lbs.	" 0.05 =	6,800		
Struct. Box Gir.....	400,000 lbs.	" 0.08 =	32,000		
Cast Iron.....	15,000 lbs.	" 0.14 =	2,100		
					\$308,500

Rock Fill 150,000 tons at 1.20.....					180,000
Toolhouse and Garage.....					20,000
Approaches (actual expense).....					35,323

Miscellaneous Construction.....\$543,823

## [fol. 423] Summary:

Piers and Foundations .....	\$1,601,640
Superstructure .....	2,543,370
Fender System & Rock Fill .....	488,500
Tollhouse & Garage .....	20,000
	<hr/>
	4,653,510
Contingencies at 5% .....	232,676
	<hr/>
	4,886,186
Approaches (actual expense) .....	35,323
	<hr/>
Total Construction Cost .....	4,921,509
Construction Engineering at 6% .....	295,291
General Expense at 4% .....	196,860
Taxes & License Fees (actual) .....	17,691
Preliminary Expense at 2½% .....	123,038
	<hr/>
Total Construction and Overhead Expenses (exclusive of interest during construction) .....	\$5,554,389

## [fol. 424] II. Miscellaneous Physical Costs

## Furniture and Equipment:

The investment in this item amounts to \$24,353.32 as shown by the company's books. Dividing this between the Carquinez and Antioch Bridges in the proportion used by the company in the case of other cost values common to both bridges (80.762% to the Carquinez Bridge), the book charge to the item would be \$19,668. The item is small and also there appears to be no reason to question its amount.

## Right of Way:

No check of the title to lands which the company has shown on its records has been made. The company holds an easement across the land of the Southern Pacific Company on the south side of the Straits for which they pay \$200 per year as rental, this rental being included in the cost of operation. A general study of those parcels of land held by

the company which appear to be necessary to the proper maintenance and operation of the bridge, and of the costs of similar lands purchased by the State of California for right of way purposes in that vicinity, indicates that a value of \$30,000 would be ample as a fair value for this item.

For the purposes of establishing a rate base it is, therefore, estimated that \$50,000 would be a reasonable value to use for the sum of the two factors of furniture and equipment and rights of way.

### [fol. 425] III. Interest During Construction

#### General Discussion:

The matter of interest during construction is deserving of special consideration as it is a relatively large item in the cost of construction and the particular assumptions made in computing it, make important differences in the item itself. The factors to be considered in the computation of interest cost are: The time required for construction and time schedule of funds required during that period; how far ahead of the actual work the funds must be obtained in order to be safe; the rate of interest which will have to be paid on borrowed money and the rate that can be obtained for funds on deposit until they are needed.

To establish a reasonable rate of interest which must be paid on borrowed money it is necessary to consider such factors as:

1. The condition of the bond market at the time or shortly before it is assumed construction will start.
2. The previous record and established credit of the borrower.
3. The risks attendant upon the construction of the project, in this case consisting almost entirely of the bridge structure.
4. The expected traffic and revenue from tolls during the franchise life remaining after the construction is completed.

#### [fol. 426] General Assumptions:

In making the following estimates for interest during construction it is kept in mind that the borrowing is being done

by a private corporation. It is assumed that the credit rating of the corporation holding the franchise is good and that the risks connected with the investment are those attendant upon the construction and future operation of the toll bridge. The condition of the bond market at the time of borrowing is generally known.

The entire cost of construction is assumed to be financed by borrowing and while the State of California has been able to obtain funds for the construction of the San Francisco-Oakland Bay Bridge in reasonable sized installments as needed, a private toll bridge company would probably have to issue bonds to cover the entire cost before starting construction. Funds not needed at once for construction will be placed on deposit and draw the prevailing interest rates for short term loans or savings accounts.

#### Book Costs:

In a previous report submitted by Mr. Coleman in connection with this case, it was stated that the work of construction prior to April 1925 was financed by the sale of stock and funds borrowed from the Rodeo-Vallejo Ferry Co., etc. The Construction work after that time was financed through the sale of \$4,500,000 first mortgage 7% and \$2,000,000 second mortgage 8% bonds at a ten per cent discount.

The cost of fender construction was financed by money obtained from toll revenues after the bridge was opened to traffic May 21, 1927. The cost of selling the company's stock as allocated to the Carquinez Bridge on the books amounted to \$476,707.70 and interest during construction amounted to \$688,092.56.

#### [fol. 427] Computed Interest Cost:

In order to check the reasonableness of the actual cost of financing the project, the amount of interest accruing during construction has been computed, assuming that bonds covering the entire cost would be issued at 8% interest and 3% interest would be received from funds on deposit until needed in accordance with the estimated schedule of construction. The estimated schedule of construction has been given in the previous report dealing with the cost of construction.

The cost of interest on this basis amounts to \$1,103,634 as shown in the attached table No. 1 prepared by Mr. A. C. Jenkins of the engineering staff of the Railroad Commission.

#### Interest for Cost of Reproduction New:

In this case it would be reasonable to assume that money must be borrowed during the latter part of 1935 previous to the start of construction work. At that time only about 12 years of the franchise life would remain and it is very unlikely that a project of this kind would be undertaken under such conditions. An earning period of less than ten years would remain in which to amortize the cost and obtain a reasonable return on the investment.  $3\frac{1}{2}\%$  bonds issued by the company as a going concern during 1935 were sold at a discount but were quoted at about 103 at the beginning of 1936 indicating that at that time they could have been sold to net the company their par value. The interest rate would have been materially lower had there been ten or fifteen more years of franchise life remaining. Although [fol. 428] the rate could not be attained for securities issued by a private corporation, it is of interest to note that bonds for the construction of the Golden Gate Bridge backed by the taxing power of the highway district which includes San Francisco County, sold in 1935 bearing a  $3\frac{3}{4}\%$  rate of interest.

For cost of reproduction, a bond issue of \$6,400,000 will be necessary to cover all construction and overhead costs with a small factor of safety, and assuming a construction period of  $2\frac{1}{2}$  years, an interest rate on borrowed funds of  $5\frac{1}{2}\%$  and 2% on funds on deposit for six months or more, the cost of interest would be \$736,455 as computed in the attached table. In consideration of the possible reduction in the construction period due to improved methods of construction previously set forth, the computed cost of interest on the above basis and a 12 year or longer franchise period would be conservatively large.



[fol. 429]

Table No. I

Bond Int. Rate = 8%

Bank Int. Rate = 3%

Date of Withdrawal	Withdrawals		Interest Earned on	
	Construction	Bond Interest	Bank Deposits	Bank Balance
1924:				
Nov. 30.....				\$6,780,000
Nov. 30.....	\$400,000			6,300,000
Dec. 31.....		\$44,667	\$15,750	6,271,083
1925:				
Feb. 28.....	250,000		31,355	6,052,438
May 31.....	450,000		45,393	5,647,831
June 30.....		268,000	14,115	5,393,946
Aug. 31.....	250,000		26,969	5,170,915
Nov. 30.....	1,000,000		38,782	4,209,697
Dec. 31.....		268,000	10,524	3,952,221
1926:				
Feb. 28.....	1,000,000		19,761	2,971,982
May 31.....	500,000		22,290	2,494,272
June 30.....		268,000	6,236	2,232,508
Aug. 31.....	500,000		11,163	1,743,671
Nov. 30.....	500,000		13,078	1,256,749
Dec. 31.....		268,000	3,142	991,891
1927:				
Feb. 28.....	500,000		4,959	496,850
May 21.....	200,000	223,335	3,725	77,241
June 30.....		2,667	193	74,767
Nov. 30.....	200,000		934	(124,299)
Dec. 31.....		16,000		(140,299)
1928:				
May 31.....		13,335		(153,634)
		<u>\$1,372,004</u>	<u>\$268,370</u>	
		268,370		
		<u>\$1,103,634</u>	Interest during construction	

( ) Indicates Red Figures.

[fols. 430-431]

Recapitulation of Cost Studies Made to Date. Includes Book Charges and Revised Estimates Covering Engineering Analysis of First Cost and Estimated Cost of Reproduction New.

Item	Book Accounts Allocated to the Item	Check Analysis of First Cost	Cost of Reproduction New
Total Construction Cost.....	\$5,816,556.53	\$5,071,993	\$4,921,509
Construction Engineering.....	390,076.11	304,320	295,291
General Expenses.....	492,018.27	220,571	214,551
Preliminary Expenses.....	476,707.70	126,800	123,038
Land and Equipment.....	(1)	50,000	50,000
Interest during construction...	688,092.56	1,103,634	736,455
	<u>\$7,863,451.17</u>	<u>\$6,877,318</u>	<u>\$6,340,844</u>

(1) Company does not segregate on its books lands that are directly applicable to bridge purposes in connection with the Carquinez Bridge.

[fol. 432] Mr. Rowell: You may explain the exhibit, Mr. Mitchell.

A. This exhibit completes the studies that were started in the previous report in which a check analysis was made of the cost of construction of the bridge. In this report we have also estimated the cost of reproduction new of the bridge at average prices existing over the past two years, which are assumed to be a reasonable construction period.

As pointed out in the report, at the time the bridge was built it was the first of a series of long span bridges that were built in the United States and the first structure of that kind to be built in the vicinity of San Francisco Bay and the foundations of the bridge at that time were among the deepest ever constructed. The construction was also complicated by the conditions in the Straits, such as swift current and deep water. And the method used to float the central spans into position was rather new at that time, it had been tried on the Quebec Bridge with rather disastrous results, and although it was accomplished here without any difficulty it, of course, reflected itself in the hazard to be faced by those undertaking the project. Since that time, of course, there have been very many—I wouldn't say very many, but a large number—of long span bridges that have been built throughout the country and in the particular Bay area, such bridges as the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, which had longer spans and deeper foundations than the Carquinez Bridge. And plants in the Bay area have been established or equipped to fabricate structural steel in large quantities, and the production of concrete aggregates and concrete itself has been [fol. 433] developed to a considerable extent since that time. All those factors we consider join in counteracting the generally higher labor and material prices of today.

It was stated at the time of presenting the last report that certain items had been omitted, which included the miscellaneous physical costs of furniture and equipment and of rights of way. Investigation shows that the amount of these items in any case is a relatively small part of the cost of the project, and in the particular case of right of way we have not had time to check into the title of the lands which the Company has shown on its records. Also there is a large acreage of land owned by the Company which would not be necessary for bridge purposes and, therefore,

it becomes necessary to segregate certain parcels of land from the other in order to arrive at what would be a fair amount to allocate to the bridge itself. We find that the land in general consists of—would consist of a small portion at the north end of the bridge to cover the immediate approach, and the toll plaza, as the highway approaching the bridge has been reconstructed entirely by the State of California. A general study of the parcels of land which were held by the Company and apparently necessary for the operation of the bridge, and of the cost of similar property purchased by the State in that vicinity, indicates that the value of \$30,000 would amply cover the present-day cost of such property. I might call attention to the fact that the crossing of the Southern Pacific Company's lands and tracks is covered by an easement on which the Company pays \$200 a year, and such amount is included in the cost of operation.

[fol. 434] In the matter of furniture and equipment I find that the investment shown on the books amounts to \$24,353, and if this is divided between the Carquinez and Antioch Bridges in the general proportion used by the Company in the case of other physical costs, that is, approximately 81 per cent to the Carquinez Bridge, the amount of the item would be \$19,668. This item is also relatively small and there appears to be no reason to question this amount. I have, therefore, recommended that, for purposes of establishing rate base, that \$50,000, that is, the sum of \$19,668 and the \$30,000, in round numbers, would be a reasonable value to use for the sum of these two factors, that is, furniture and equipment, and rights of way.

A. Coming to the matter of interest during construction, in the previous report it was recommended that, for purposes of checking the actual cost of interest during construction, it would be assumed that a rate of 8 per cent would have to be paid on borrowed money and that funds on deposit would draw 3 per cent interest and that all the money would have to be borrowed by a private corporation previous to starting the work, in order to be safe and in order to meet the payments as they became due. Apparently there was some misunderstanding in figuring the amounts in conformity with that assumption, and so a further study indicates that we should revise those figures. And in this report I have shown in detail the amount of interest during

construction that would be arrived at on that basis. This Table No. 1 attached to the report shows that. In general the matter of interest during construction is deserving of [fol 435] special consideration, as it is a relatively large item in the cost of construction and the particular assumptions made in computing it make very important differences in the item itself. The factors, of course, to be considered are the time required for the construction and the time schedule of the funds required during that period and how far ahead of actual work the funds must be obtained in order to be safe, as well as the rate of interest paid on borrowed money and the rate obtained for funds on deposit until those funds are needed. The rate of interest to be estimated would depend on the conditions of the bond market at the time, or at least a short time before assumed construction will start, as well as the previous record and the established credit of the borrower and the risks attendant upon the construction of the project, which in this case, of course, consists almost entirely of a large bridge structure. And finally there are the expected traffic and revenues from tolls to be obtained during its franchise life which remains after construction is completed. And in this report it has been kept in mind that the operating is to be done by a private company. It is assumed that the credit rating of the corporation which holds the franchise is good and that the risks are just those attendant upon the construction and future operation of the bridge. The entire cost of construction is assumed to be financed by borrowing and the entire amount obtained previous to starting construction, for, although the State of California has been able to obtain funds for the construction of the San Francisco-Oakland Bridge in reasonably sized installments as the money was needed, it is [fol 436] not believed that a private toll bridge company, or at least at that time, would have been able to follow this procedure and would have had to obtain the entire amount of funds by a bond issue previous to starting construction. It has been assumed that funds not needed at once for construction would be placed on deposit at prevailing interest rates for short term loans or savings accounts.

For purposes of comparison I have included a statement as to the book costs covering the cost of financing the project. And as has been stated in the previous report put in by Mr. Coleman at the last hearing, the work of construction prior

to April, 1925, was financed by the sale of stock and funds borrowed from the Rodeo-Vallejo Ferry Company and other sources. The construction work after that time was financed through the sale of \$4,500,000 first mortgage and \$2,000,000 second mortgage bonds, the first mortgage bearing 7 per cent and the second mortgage 8 per cent interest rate, and sold at a 10 per cent discount.

The cost of the fender construction was financed by money obtained from toll revenues after the bridge was opened to traffic on May 21, 1927.

The cost of selling the Company's stock as shown on the books amounts to \$476,707, as shown in the previous report, and the interest during construction amounted to \$688,092. We have obtained from representatives of the Toll Bridge Company a further distribution of the item of interest during construction, that is, in the amount of \$688,092, and that is shown in the report. It shows in a general way the [fol. 437] charges for each time period throughout the construction of the bridge. And in order to check the reasonableness of actual cost of financing the project, the amount of interest accruing during construction has been computed on the assumptions mentioned before, that is, borrowing at 8 per cent, and 3 per cent interest on funds on deposit. As I stated before, the table showing the actual cost is prepared by a representative of the Railroad Commission's staff and has been attached to the report.

Mr. Thelen: I understand that you have now increased your estimate of reasonable cost of original construction from \$6,186,071 to \$6,877,318?

A. Yes; and that is due practically to recomputing the interest during construction on the basis there.

Mr. Rowell: Mr. Mitchell, have you also made a similar study of the cost of the Antioch Bridge?

A. Yes, I have.

Mr. Rowell: I ask that it be introduced and given the next exhibit number.

Commissioner Riley: It will be received as Exhibit No. 17 by the Commission, if there is no objection.

(Here follows Exhibit No. 17—page 7.)



[fol. 438]

## COMMISSION EXHIBIT No. 17

## California Railroad Commission

## Transportation Department, Engineering Division

Study of Construction Costs in Connection With the  
Antioch Bridge

Case No. 4259

San Francisco, California, November 30, 1937.

Stewart Mitchell, Senior Bridge Engineer, Division of  
Highways, Department of Public Works, State of California.

[fol. 439]

## Recapitulation of Cost Studies Made in Connection with the Antioch Bridge

Item	Book Accounts allocated to the item	Estimated Costs 1924-25 (Original Construction)	Estimated Costs 1936-37 (Reproduction New)
Construction Cost.....	\$1,262,876.23	\$1,023,657	\$1,004,021
Construction Engineering.....	165,424.30	61,419	60,241
General Expense.....	163,831.30	95,597	94,812
Preliminary Expense.....	113,554.68	25,591	25,101
Interest During Construction..	28,790.51	133,873	91,930
Total.....	\$1,734,477.02	\$1,340,137	\$1,276,105

[fol. 440] Mr. Rowell: Well, you might recapitulate, Mr. Mitchell, though, and give a summation of the results,

A. We have been able to obtain less detailed information with regard to the construction of the Antioch Bridge, that is, its construction history. In the case of the Carquinez Bridge, with my connection with the State, why, we made studies early in its operating history and were able, being more interested in the Carquinez Bridge, to obtain more detailed information from those who had charge of the construction at the time. It is a little difficult now to go back and get similar information for the Antioch Bridge, at least within the time that has been available to prepare the report. However, we followed the same procedure in estimating a reasonable cost of construction at that time, based upon the assumption that ample finances were available to let the entire work to contract by competitive bidding. As before, we have shown the actual charges on the Company's books which are allocated to the various items of construction, in so far as it has been able to allocate

them, and we have estimated the costs of construction on the basis I just mentioned, as of 1925-1926 prices and again as of 1936-1937 prices, as to cost of reproduction new.

Q. You intended to state 1924-1925 prices, did you not?

A. Yes, 1924-1925. I was thinking of the Carquinez Bridge in that case. This bridge was completed a little earlier. There was not time available to get the detailed break-down of the estimate of construction cost at this time, and if that is considered necessary, why, we can have copies made of that and furnish them to the parties interested in it.

[fol. 441] J. G. HUNTER, a witness called on behalf of the Commission, being first duly sworn, testified as follows:

Direct examination:

Mr. Rowell: Will you state your full name and your position, Mr. Hunter?

A. J. G. Hunter; Transportation Engineer in the Engineering Division of the Transportation Department, California Railroad Commission.

Q. Will you state how long you have held that position and generally what experience you have had as an engineer?

A. I was appointed transportation engineer in 1928. Previous to that I was connected with the engineering division as assistant engineer. I was employed originally by the Commission in 1920. For about 3 years I was in the hydraulic division, and following that time and up to the time I was appointed transportation engineer I was in the Transportation Department.

Q. Have you prepared a proposed exhibit in this proceeding entitled "Analysis of the operating results of Carquinez Bridge and estimates of future travel and revenue"?

A. I have.

Mr. Rowell: I ask that the exhibit referred to be received in evidence.

Commissioner Riley: There being no objection, it will be received as Commission's Exhibit No. 19.

(Here follows Exhibit No. 19—map preceding page 1; pages 10, 11, 12, 13; and attached exhibit being Ordinance No. 171 of Contra Costa County, pages 1 to 8, inclusive.)

[fol. 442]

COMMISSION EXHIBIT No. 19

Witness Hunter

California Railroad Commission

Transportation Department, Engineering Division

Analysis of the Operating Results of the Carquinez Bridge,  
With Estimates of Future Travel and Revenue

Case No. 4259

San Francisco, California, November 30, 1937.

J. G. Hunter, Transportation Engineer.

(Here follows one photolithograph, side folio 442a)









[fol. 443] Estimated Results of Traffic for Years 1936-1937,  
if a Rate of 50-Cents for Automobile and Passengers up  
to and Including Five Had Been Applied

In comparing the rates of the Carquinez Bridge with the other major toll bridges across the San Francisco Bay and its tributaries, the most outstanding difference is in the tolls for automobiles and passengers. The two major bridges, viz., the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, now have a toll of 50 cents for an automobile and passengers up to and including five, whereas the rate on the Carquinez Bridge is 60 cents per automobile plus 10 cents per passenger.

The following tabulations set forth the results of our study if the same toll for automobile and passengers as obtains on the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge had been applied to 1936 traffic and that estimated for 1937 over the Carquinez Bridge. The results of this study are set forth in the following tables:

[fol. 444]

## Traffic Over Carquinez Bridge, and Revenue of the Year 1936 and Estimated for 1937, as Developed from the Company's Records

Item	1936			1937		
	Toll Rate	Number of Vehicles	Revenue	Toll Rate	Number of Vehicles	Revenue
<b>Automobiles:</b>						
Cash.....	60¢	1,160,165	\$696,099.00	60¢	1,424,381	\$854,598.60
Commute.....	Commute Rate	79,696	18,521.60	Comm. Rate	86,897	22,751.11
P.W.A. Employees.....	7½¢	44,120	3,309.00	7½¢	13,900	1,029.30
<b>Total.....</b>		<b>1,283,951</b>	<b>\$717,929.60</b>		<b>1,524,828</b>	<b>\$878,369.71</b>
<b>Trucks:</b>						
(Including Freight Revenue).....	Aver. \$1.64	131,531	\$215,309.44	Aver. \$1.66	141,227	\$234,198.15
Stages.....	50¢	53,077	17,024.05	50¢	41,378	20,686.50
Miscellaneous.....	Aver. 51¢	18,493	9,884.66	Aver. 74¢	23,083	17,199.59
<b>Total.....</b>		<b>183,101</b>	<b>\$242,218.15</b>		<b>205,688</b>	<b>\$272,054.24</b>
<b>Total for Vehicles.....</b>		<b>1,467,052</b>	<b>\$960,147.75</b>		<b>1,730,511</b>	<b>\$1,150,423.95</b>
<b>Passengers:</b>						
Auto, Stage, Truck & Misc.....	10¢	2,754,077	\$275,407.70	10¢	3,385,600	\$338,560.00
Stages Charge.....	7½¢	474,078	35,565.85	7½¢	577,337	43,300.27
Trucks Charge.....	10¢	16,885	1,688.50	10¢	24,435	2,443.50
Commute.....	Commute Rate	56,786	5,679.50	Comm. rate	69,626	6,962.60
<b>Total for Passengers.....</b>		<b>796,160</b>	<b>27,711.71</b>		<b>452,231</b>	<b>22,753.69</b>
<b>Grand Total.....</b>		<b>4,097,995</b>	<b>\$946,043.26</b>		<b>4,509,229</b>	<b>\$414,020.05</b>
			<b>\$1,306,191.01</b>			<b>\$1,564,444.00</b>

[fol. 445]

Estimate of Traffic and Revenue over Carquines Bridge, Applying Revised Rate Structure of 50¢ for Auto, with Driver and Passengers not Exceeding Four, 5¢ for All Other Passengers

Assuming 2.2 passengers per automobile

Assuming 13.5% increase in automobile traffic

Year 1936

Item	Under Existing Rates			Proposed Rates			Decrease under Proposed Rate Structure
	Number	Rate	Revenue	Number	Rate	Revenue	
Automobiles	1,160,165	60¢	\$696,099.00	1,316,787	50¢	\$658,393.50	\$37,705.50
Passengers:							
Auto	2,552,363	10¢	255,236.30				255,236.30
Stages, Trucks, Misc.	201,714	10¢	20,171.40	201,714	5¢	10,085.70	10,085.70
Stages (Charge)	474,078	7½¢	35,555.85	474,078	5¢	23,703.90	11,851.95
Stages (Charge)	16,885	10¢	1,688.50	16,885	5¢	844.25	824.25
Trucks (Charge)	56,795	10¢	5,679.50	56,795	5¢	2,839.75	2,839.75
Total							\$318,563.45
Available for return under existing rate structure						\$809,663	
Decreases under proposed rate structure						318,563	
Available for return under proposed rate structure						\$491,100	
Investment						\$6,880,000	
Rate of return under proposed rate structure						7.14%	

[col. 446]

Estimate of Traffic and Revenue over Carquines Bridge, Applying Revised Rate Structure of 50¢ for Auto, with Driver and Passengers Not Exceeding Four, 5¢ for All Other Passengers

Assuming 2.2 passengers per automobile  
Assuming 13.5% increase in automobile traffic

Year 1937

Item	Under Existing Rates			Proposed Rates			Decrease under Proposed Rate Structure
	Number	Rate	Revenue	Number	Rate	Revenue	
Automobiles	1,424,331	60¢	\$854,598.60	1,616,616	50¢	\$808,308.00	\$46,290.60
Passengers:							
Auto	3,133,528	10¢	313,352.80				313,352.80
Stages, Trucks, Misc.	252,072	10¢	25,207.20	252,072	5¢	12,603.60	12,603.60
Stages (Charge)	577,337	7½¢	43,300.27	577,337	5¢	28,866.85	14,433.42
Stages (Charge)	24,435	10¢	2,443.50	24,435	5¢	1,221.75	1,221.75
Trucks (Charge)	69,626	10¢	6,962.60	69,626	5¢	3,481.30	3,481.30
Total							
Available for return under existing rate structure						\$961,174	\$391,383.47
Decrease under proposed rate structure						391,383	
Available for return under proposed rate structure						\$569,791	
Investment						\$0,880,000	
Rate of return under proposed rate structure						8.28%	



[fol. 447] BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY  
OF CONTRA COSTA, STATE OF CALIFORNIA

In the Matter of the Application of RODEO-VALLEJO FERRY  
COMPANY, a Corporation, for Authority to Erect, Con-  
struct and Maintain a Toll Bridge and Take Tolls  
Thereon Across the Straits of Carquinez Between Contra  
Costa County and Solano County, California

### Ordinance No. 171

An Ordinance Granting the Application of Rodeo-Vallejo  
Ferry Company, a Corporation, and Franchise to Erect,  
Construct and Maintain a Toll Bridge Across the Straits  
of Carquinez, Between the County of Contra Costa and  
County of Solano, State of California, and Take Tolls  
Thereon.

The board of supervisors of the county of Contra Costa,  
State of California, do ordain as follows:

That the Rodeo-Vallejo Ferry Company, a corporation,  
organized and existing under and by virtue of the laws of  
the State of California, and having its principal place of  
business in the town of Rodeo, county of Contra Costa,  
State of California, having made its duly verified applica-  
tion in writing in due form of law to the board of super-  
visors of the county of Contra Costa for authority to erect,  
construct and maintain a toll bridge with the right; privi-  
lege, and permission to take tolls thereon across the  
Straits of Carquinez between the county of Contra Costa  
and the county of Solano, in the State of California, as  
described in the application of Rodeo-Vallejo Ferry Com-  
pany, a corporation, therefor; and

Whereas, the county of Contra Costa, is the county on  
the left bank descending of the Straits of Carquinez, the  
body of water or stream across which it is proposed to erect,  
construct and maintain said bridge; and,

Whereas, this board has jurisdiction to hear and act  
upon said application, and,

Whereas, the board of supervisors of the county of Con-  
tra Costa, on the sixth day of November, 1922, proceeded  
to hear and did hear the application of said Rodeo-Vallejo  
Ferry Company, a corporation, and continued the further  
hearing thereon from time to time and until the eighth  
day of January, 1923, and said board of supervisors on

said eighth day of January, 1923, all members thereof being present, duly passed and adopted a resolution expressing its desire to grant the privilege, permission and franchise to the Rodeo-Vallejo Ferry Company, a corporation, its successors and assigns, to erect, construct and maintain a toll bridge across the Straits of Carquinez, between the county of Contra Costa and the county of Solano, in the [fol. 445] State of California, and having found and determined therein the precise point where such bridge is proposed to be located in the manner prescribed by law, and this honorable board having thereupon notified W. F. McClure, state engineer of the State of California, of such purpose and the precise point where such bridge is proposed to be located, and duly and regularly continued the further hearing of said application and the hearing thereon to this fifth day of February, 1923, and said engineer having in accordance with law designated the length of the spans necessary to permit the free flow of water in said Straits of Carquinez, there being no draw in said bridge, and having filed in writing his designation as aforesaid, with the board of supervisors in pursuance of law on this fifth day of February, 1923.

And now on this fifth day of February, 1923, it fully appearing to the satisfaction of this board that due proof has been made that due and legal notice of said application of said Rodeo-Vallejo Ferry Company, a corporation, for the right and franchise to so erect, construct and maintain a toll bridge across said straits and to take tolls thereon and the time and place fixed for the hearing thereof and thereon has been made and given in all things in the manner and for the time prescribed by law, and this board having in open and regular session duly considered said application for such franchise and permission to take tolls thereon now determines and finds that the application of said Rodeo-Vallejo Ferry Company, a corporation, is in all things as required by law, and that due and legal notice of said application has been given in manner prescribed by law and that this board has jurisdiction to hear and act upon said application and grant said franchise.

That said toll bridge across said straits prayed for in said application of said Rodeo-Vallejo Ferry Company, a corporation, between the points and at the location determined by this board, is a public necessity.

That the expense of the erection, construction and maintenance of such a toll bridge as a free public highway is in the opinion of the board and this board so determines and finds too great to justify the erection, construction and maintenance thereof by the counties of Contra Costa and Solano.

That said bridge is a public necessity. That in the opinion of the board the public good and interests require the construction of said bridge. That the public good and public necessity will be promoted by the erection, construction and maintenance of said bridge as proposed by the said Rodeo-Vallejo Ferry Company, a corporation.

That said Rodeo-Vallejo Ferry Company is the owner of lands in Contra Costa County, California, hereinafter particularly described upon which the southern terminal of said bridge is to be located.

[fol. 449] That the bridge as proposed to be erected by the Rodeo-Vallejo Ferry Company, a corporation, is of such type that it will not interfere with or obstruct navigation and will allow sufficient space or span to permit the safe, expeditious and convenient passage at all times of all vessels which may navigate said straits.

That there is no toll bridge at the proposed location nor is there any bridge whatever across said straits.

That there is no ferry operating across said Straits of Carquinez within a mile of the site of the proposed bridge, save and except that of said Rodeo-Vallejo Ferry Company, a corporation.

Thereupon, it is by the board of supervisors of the county of Contra Costa, State of California, ordered, that said bridge is a public necessity; that the public good and interests require the construction thereof; that the public good and interests and public necessity will be promoted by the erection, construction and maintenance of said bridge.

That said bridge is to be erected, constructed and maintained in a straight line across the Straits of Carquinez, between the county of Contra Costa and the county of Solano, State of California, between the terminal points or location hereinafter described;

That the said application of the Rodeo-Vallejo Ferry Company, a corporation, is hereby granted, and the Rodeo-Vallejo Ferry Company, a corporation, its successors and assigns, is hereby granted the rights, privilege, permission,

authority and franchise to erect, construct and maintain a toll bridge with the right to take tolls thereon across the Straits of Carquinez, between the county of Contra Costa and the county of Solano, State of California, in a straight line between the terminal points hereinafter particularly described, with the proper approaches thereto, for the term of twenty-five (25) years, from and after the effective date of the ordinance granting said franchise.

It is hereby ordered that at the expiration of term hereby granted the title to said toll bridge shall revert to the counties of Contra Costa and Solano.

Said bridge is to be constructed of concrete and steel and is to be of the suspension type or such other type as the War Department of the United States in its judgment may prescribe. It shall be of a height of one hundred thirty-five (135) feet in the clear above mean high water on said straits, at all points between the southerly proposed new pierhead line as hereafter described and the next pier north of said line. The breadth of said roadway of the said bridge shall be not less than thirty (30) feet; said bridge shall be constructed in all things in accordance with the requirements of the United States War Department. No pier of said bridge nor any portion thereof nor any other obstruction below said 135 feet clearance shall be placed in the Straits of Carquinez, between a straight line drawn from the northwest corner of the California and [fol. 450] Hawaiian Sugar Refining Corporation's wharf and the northeast corner of Selby *whaft* (said line being the proposed new pierhead line to be established by the proper authorities of the United States) and a point one thousand (1000) feet northerly from said line.

That the location of the Contra Costa County terminal of said bridge is as follows:

Portion of Location No. 229, the State Tidelands, Contra Costa County, lying within the southeast quarter of section 31, township 3 north, range 3 west, M. D. B. and M., and more particularly described as follows, to wit:

Beginning at a point on the southerly side of the Straits of Carquinez 14.36 chains north of the southeast corner of section 31, township 3 north, range 3 west, Mount Diablo meridian in the line of extreme low; thence south 5.07 chains to a station in the United States bulkhead line; thence north 89° 17' west, running along said bulkhead line 5.57 chains to station; thence north 4.70 chains to sta-

tion in low water line; thence north  $87^{\circ}$  east, 5.58 chains into the place of beginning, run by the true meridian, magnetic variation  $17^{\circ} 05'$  east, containing 2.71 acres.

Also on that certain roadway situate in said county and state aforesaid and more particularly described as follows, to wit:

Commencing at a point where the center line of First Avenue, town of Valona, Contra Costa County, intersects the southerly shore of Carquinez Straits in southerly line of Tideland Survey No. 44, C. C. Co., thence north 760 feet more or less, crossing the lands of the Northern Railway Co. and lands formerly owned by Mrs. Muir and the State of California, to the line of the tract of 2.71 acres above described. The above described line is the center line of a 40-foot roadway.

That the location of the Solano County terminal of said bridge is as follows:

On that certain tract of land situate, lying and being in the county of Solano, State of California, and known as the James Clyne tract, located in the north half of section 32, and the south half of section 29, in township 3 north, range 3 west, M. D. B. and M., which said tract of land lies between the lands of the Pinole Dome Oil Company on the east and the lands of Antonio dos Reis and the lands of the Great Western Power Company in the west, and more particularly described as follows, to wit:

Beginning at the point of intersection of the line of mean high water on the north shore of Carquinez Straits with the westerly line of the James Clyne tract in section 32, township 3 north, range 3 west, M. D. B. and M. (if the public land surveys of the United States be considered extended over said land) and running thence northerly along said westerly line of the James Clyne tract, 600 [fol. 451] feet to a point on said line; thence east 350 feet; thence south 550 feet more or less, to said line of mean high water on the north shore of Carquinez Straits; and thence westerly along said line of mean high water to the point of beginning.

The precise point on the above described locations where such bridge is to be located is as indicated on sheet 2 accompanying report of W. F. McClure, state engineer of the State of California, and dated February 1, 1923, and filed with the board of supervisors of Contra Costa County



on the fifth day of February, 1923, reference to which is hereby made as a part hereof, and is particularly described as follows, to wit:

The bridge axis or center line is fixed by a straight line passing through the two following points:

1. Point P, which is the intersection of the bridge axis with the property line between James Clyne and the Great Western Power Company on the Solano shore. This point P is 410 feet from a point marked Q and measured along the boundary between the James Clyne property and that of the Great Western Power Company. This line bears south  $32^{\circ}$  west. The point Q is the intersection corner common to the properties of James Clyne, the Great Western Power Company and Manuel and Antonio dos Reis.

2. Point R, shown on sheet 2 on the Contra Costa side along the front property line of the Rodeo-Vallejo Ferry Company, which line bears north  $87^{\circ}$  east, the point R is 120 feet westerly along this line from the northeast corner of the Rodeo-Vallejo Ferry Company's property location 229, 2.71 acres; this northeast corner of the ferry company's property is 14.36 chains north of the intersection point common to sections 5, 6, 31 and 32.

That a penal bond be given by the Rodeo-Vallejo Ferry Company, a corporation, for the benefit of the county and all persons crossing or desiring to cross said bridge, in the sum of twenty-five thousand (25,000) dollars, conditioned as required by law, said bond to be given at least ten days before the operation of said bridge and the taking of tolls thereon.

That the Rodeo-Vallejo Ferry Company, a corporation, give bond in the county of Contra Costa, in the sum of fifty thousand (50,000) dollars, guaranteeing the faithful performance of all the terms and provisions of the ordinance granting franchise herein, said bond to be given within thirty days after the ordinance granting this franchise becomes effective, said bond not to be effective until after the approval of said bridge and franchise by the War Department of the United States.

That the license tax to be paid by the Rodeo-Vallejo Ferry Company, a corporation, its successors and assigns, for taking tolls on said bridge shall be one hundred (100) dollars per month, payable annually, commencing from

date of the operation of said bridge. That two (2%) per cent of the gross receipts derived from the use and operation of said bridge shall also and in addition be paid to the county of Contra Costa, for the benefit of the counties of Contra Costa and Solano for the use of said franchise.

The actual construction of said bridge in good faith, shall be started within four months from the date of this ordinance granting said franchise and shall be completed within three years thereafter, or such further time as may be granted by the board of supervisors.

It is further ordered that the rate of tolls which may be collected for crossing said bridge shall be as fixed by the Railroad Commission of the State of California, and that in the event said Railroad Commission shall fail to fix such tolls then it is hereby further ordered that the rate of tolls which may be collected for crossing said bridge shall be as follows:

#### Automobiles

	Rate
Ambulances, self propelled or horse drawn	\$0.75
Automobiles	.75
Automobile passenger busses	1.50

#### Bicycles

Bicycle, accompanied by owner, each	.25
-------------------------------------	-----

#### Carts and Wagons

Cart or wagon without horse	.75
Push carts (attendant and freight extra) each	.25

#### Commercial or Delivery Automobiles and Motor Trucks

Not exceeding two tons capacity, each	1.00
Exceeding two tons capacity, each	1.50

#### Ditchers, Harvesters, etc.

Ditchers, harvesters, steam rollers, tractors, and all similar conveyances, machines, and vehicles charged on a basis of weight, per ton of 2000 lbs. at carrier's convenience	per ton 1.60
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## Cattle and Stock

Cattle, per head, and stock in herds and uncrated, including one attendant . . . . .	each	.50
Sheep and swine uncrated and in herds, including one attendant . . . . .	each	.35

[fol. 453]

## Commutation Rates

Motor stages operated daily over a fixed route (minimum charge per day \$10.00 per trip, includes driver but no passengers) . . . . .		\$0.50
Daily round trip for automobiles and driver, per month . . . . .		25.00

## Freight

Freight of all kinds on vehicles, per 1000 lbs. (minimum charge 20 cents) . . . . .		.40
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## Hearses

Hearses, self propelled or horsedrawn (with or without casket and corpse) . . . . .		1.25
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## Horses

Horse and wagon or cart, or pleasure vehicle . . . . .		1.00
Two horses and wagon, or pleasure vehicle . . . . .		1.50
Two horses and dray, or truck, or commercial vehicle . . . . .		1.75
One horse or draft animal, not attached to vehicle, each . . . . .		.50
Each horse over two attached to vehicle; each . . . . .		.50

## Motorcycles

Motorcycles, each . . . . .		.25
Motorcycles, with side car, each . . . . .		.50

## Trailers

Two-wheel trailers attached to automobiles . . . . .		.50
Four-wheel trailers attached to automobiles or trucks (camping equipment in trailers charged as freight) . . . . .		.75

### Passengers

	Rate
Passengers, drivers of vehicles and pedestrians, one way .....	.15
Passengers, drivers of vehicles and pedestrians, round trip .....	.25

### Commutation Rates

Passengers, drivers of vehicles and pedestrians, per month .....	3.00
--	------

Said bridge shall be constructed in accordance with the requirements of the United States War Department.

It is further ordered that this ordinance be published before the expiration of fifteen days after the passage thereof, together with the names of the members of the [fols. 454-455] board voting for and against the same, for at least one week in the Contra Costa Gazette, a newspaper printed and published in the county of Contra Costa.

This ordinance shall become effective thirty days from and after its passage.

The foregoing ordinance was adopted this fifth day of February, 1923, by the following vote:

Ayes: Supervisors Zeb Knott, C. H. Hayden, W. J. Buchanan and R. J. Trembath.

Noes: Supervisors—None.

Absent: Supervisor J. P. Casey.

W. J. Buchanan, Chairman of the Board of Supervisors of the County of Contra Costa. (Seal of Board of Supervisors.)

Attest: J. H. Wells, Clerk of Board of Supervisors.

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[fol. 456] A. This exhibit generally deals with the operating conditions of the Carquinez Bridge, as we see them, and goes into traffic, revenue, expenses, and projects traffic into the future and also finally deals with the rate structure which we think can be supported to the effect that the present rate of 60 cents per automobile and 10 cents per passenger can be reduced to 50 cents per automobile, driver and passengers up to 5.

Q. Have you arrived at any conclusion as to what would be the revenues for the year 1938 at existing toll rates, or will you take that up later?

A. I have not made that calculation. The figures are available to make it. I have made the calculation on the other set-up, but I think that would be a good figure to develop in this record. However, it has not been worked up in this report.

Q. Now, as to your depreciation expense allowance which for the year 1933 is in the amount of a little more than \$200,000, you have stated that is a 6 per cent sinking fund annuity. What life is used?

A. The life within the limits of the franchise granted there, of 25 years, expiring in 1948. Of course, in figuring that you have to take out of that 25-year period the time that was consumed in building the bridge, some 3 years, but that is merely a calculation of 6 per cent interest for that known amount, the estimated cost, deducting the construction period.

Q. You say the estimated cost. What is the amount of your depreciable base to which that annuity is applied?

A. That is \$6,880,000.

Q. And it would be practically a 23-year life, is that correct?

A. That is approximately correct.

[fol. 457] — — —

A. For 1937 it is estimated that the Company earned 6.78 per cent on their investment; 1928, 4.62; 1929, 7.79; 1930, 8.82; 1931, 7.69; 1932, 5.72; 1933, 4.96 per cent; 1934, 5.48; 1935, 5.90; 1936, 8.52 per cent, and with the two months of 1937 projected, 10.21 per cent.

Q. Now, I take it that the income taxes which you have in this table are the actual taxes paid and allocated to the Carquinez bridge?

A. That is correct. The Company actually pays its Federal income tax on the combination of the two bridges.

Q. What is the basis of allocation?

A. The basis of the allocation—I stand corrected if I am not right in this—Mr. Coleman gave the figure, I believe—in on their relative earning position.

Q. The relative revenues from the two bridges?

A. That is correct.

Mr. Coleman: I don't believe they segregated the income tax that way. The income tax is set up on their books at



one figure and is not apportioned between the two bridges.

A. I stand corrected. I was not sure on that.

Q. It might be well, Mr. Hunter, to explain the rate of charge applied to trucks.

A. Trucks under 3000 pounds take a rate of 60 cents; trucks between 3000 and 6000 take a rate of 80 cents.

Q. That is the truck and the freight, is that correct?

A. That is the truck alone. There is another charge for the freight. Trucks between 6000 and 9000 take a rate of \$1.30, and I don't know whether I gave from 6000 to 9000—oh, strike that. Trucks from 6000 to 9000 the rate is [fol. 458] \$1. Trucks over 9000 it is \$1.30. These other items, for instance, trailers, 2-wheel, attached to an auto, 25 cents; 4-wheel trailer takes a rate of 50 cents; freight on vehicles takes a rate of 30 cents per ton. Various other vehicles are classed in the next group, such as ditchers, harvesters, tractors, road rollers, and so forth, take a rate of \$1.50. I might finish these rates. The commute rate for passengers on foot or in vehicle is \$2 per calendar month. The commute rate for an automobile and one, per calendar month, \$17.50. Now, in addition to the rates on trucks that I have given you there is a commute rate set up in their tariff varying from \$21 per month to \$51 per month, that is, per calendar month. In addition to these rates there are other special rates for the Federal Government, of which the PWA is one.

Turning now to the next table shown on page 12, the purpose of that table is to show the results of our estimates between what would obtain under the prevailing rates of the Company, the Carquinez Bridge, during 1936, as compared to what would result from the condition if the rate of 50 cents per automobile and driver and up to 5 passengers had been in effect. Now, I might at this time comment a little upon this question of this automobile fare. In looking over the rates for the various bridges I think the most outstanding difference between the rates for the Carquinez Bridge and other bridges, the major bridges, is the rate that obtains for automobiles and passengers. As you know, the rates on the San Francisco-Oakland Bay Bridge are 50 cents per automobile with passengers up to [fol. 459] 5, which is the same rate as the Golden Gate Bridge. In the case of the Dumbarton Bridge the rate is 40 cents for an automobile.

Q. Including passengers?

A. Excluding passengers. The passengers are 5 cents. In the case of the San Mateo Bridge the rate for automobile and passengers up to 7 is 65 cents, and over 7 is 5 cents. And in the case of the Carquinez Bridge, as I have stated, it is 60 cents and 10 cents for each passenger. In looking over the rate structures as between these various bridges it seems as though the truck rate and the freight rate do not have the same outstanding differences as obtains in the case of the automobile and passengers. For that reason it was thought desirable to apply against this Company's operation the results that would obtain if the automobile and passenger rate were brought down to a level with the rates now in effect on the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge. Now, it does not mean that that is the only adjustment that might be made. We could have gone ahead and made other rate studies but we have made this study, which we think is most appropriate, and I think one that should be seriously considered. Time has not permitted of a great many other studies that might have been employed.

With that statement I will turn to this table shown on page 12. Now, that applies to the year 1936 and that is based upon the assumption that there are 2.2 persons per automobile on the average. That average is just slightly greater than was obtained in our origin and destination check which resulted in a rate of 2.17 persons per automobile. But we decided to use 2.2 as it seemed to be a [fol. 460] fair and reasonable figure to employ in this case. It is also based upon the assumption that with this lesser rate in effect there will be an increase in travel over that bridge in amount of  $13\frac{1}{2}$  per cent. Now, that  $13\frac{1}{2}$  per cent is arrived at by studying the traffic that passed over that bridge during the 2 days that we made the origin and destination check which Mr. Hall has introduced. And applying to those various groups what we thought was a reasonable allowance in each case, we come out with a sum total of  $13\frac{1}{2}$  per cent increase with this rate. That, obviously, is a judgment figure. Basing the table on those two factors, we will take the automobiles that actually passed over the bridge in 1936, amounting to 1,160,165, at 60 cents, which produces a revenue of \$696,099. Now, if we assume that if the 50-cent rate is put into effect and the traffic will increase by  $13\frac{1}{2}$  per cent, we will get a result of 1,316,787 vehicles, and at 50 cents that amounts to \$658,393.50. That

shows a difference of \$37,705. In other words, the bridge's revenues would have been decreased by that amount under the assumptions we have made.

Mr. Rowell: Have you formed any conclusion, Mr. Hunter, as to the propriety of the use of the sinking fund annuity with an undepreciated rate base in this case?

A. I would recommend that that method of determining depreciation be employed. It seems to me that it is fair and equitable to all parties. If the sinking fund method is employed the investor, in turn, gets his money back, the traffic as it goes along pays an equal amount, and it seems to me that that method of setting up depreciation is the most [fol. 461] equitable one and, as I understand it, the one generally followed by the Commission, except that consideration is given to the straight line method also.

Q. Have you reached any conclusion as to the depreciation rate in determining the annuity?

A. That depreciation rate is pretty severe, I would say, particularly in the experience we have just had in the last few years. It would be difficult to invest money at 6 per cent interest. However, the Company, as I understand it, has been buying up its bonds. These bonds pay something between 5 and 6 per cent. And the Company itself employs the 6 per cent sinking fund method, with that added feature that I explained this morning, that they add to that the accumulated interest, the interest on the accumulated fund.

Q. Then I understand you to conclude that if the Company is able to invest its depreciation reserve in its own bonds and obtain thereby the saving or earning of 6 per cent or more, it would be reasonable to take the 6 per cent annuity rate?

A. If they can do that, yes.

Q. Have you reached any conclusion as to the period over which the depreciation should be set aside? I notice you have a 25-year life and other lives in your table here.

A. Well, I think unfortunately for the traffic that now has to pay the tolls over that bridge, the life is very short; that is, that investment must be amortized over a period of much less than the expected life of that bridge. If that could be lengthened out in keeping with the life of that bridge it would make a material difference, as these curves show, and that was the primary reason for presenting those [fol. 462] curves on these different bases. But we, in our

calculation studies, have used the short life as laid down in the franchise.

F. COLEMAN, recalled.

Direct examination resumed:

Mr. Rowell: I believe you have been sworn before, Mr. Coleman?

A. Yes.

Q. Have you prepared any further material for introduction as an exhibit in this proceeding to supplement your Exhibit 1 introduced at the last hearing?

A. Yes. My first exhibit, Exhibit No. 1, included a balance sheet as of August 31, 1937, and income accounts up to August 31, 1937. Since that time I have brought those figures up to date and have prepared a balance sheet as of October 31, 1937; income accounts for the 10 months' periods ending October 31, 1936, and 1937, and for the 12 months ending October 31, 1937, and detailed statements of the revenues and expenses broken down to the two bridges for the last three 12-months' periods.

Mr. Rowell: I suggest that material be received in evidence and given an exhibit number.

Commissioner Riley: If no objection that will be received as Exhibit No. 21 by the Commission.

Q. Mr. Coleman, if you were to treat the investment made by the holders of bonds and the holders of stock of the American Toll Bridge Company as a wasting asset, to be returned over the remaining franchise life, would a decreased net revenue as estimated by Mr. Hunter be sufficient to so amortize the investment of the bondholders and stock-[fol. 463] holders plus, after the payment of all expenses of operation, over that period?

A. I would conclude the revenue would be sufficient to do that.

Q. Could you amplify that statement and tell us how you would approach this rate-making problem from that point of view?

A. Exhibit No. 21 shows the bonds outstanding in the total principal amount of \$3,491,500.

Q. Will you refer to the page?

A. It is the first two pages of the exhibit. The first page, the statement of assets, shows a deposit designated "Retirement fund, first 5½'s, of \$126,000." That money presumably has been appropriated to retire bonds. The last quotation I saw on these bonds was 99½ asked, from which I could assume that, if necessary, the Company with \$126,000 in cash could retire approximately \$126,000 of bonds. That would leave a net figure representing the bonds of \$3,365,500. The Company's stock is shown on this balance sheet as \$5,000,000, less treasury stock of \$1,280,407, leaving net stock outstanding, par value, \$3,719,593. I have considered that stock at par. The balance sheet also shows current assets of \$512,046.29; prepaid expenses, a total item of \$127,348; and on the other side, current liabilities, \$51,397.03; prepaid rentals, \$61,174.80; 2 per cent gross earnings tax unpaid amounting to \$261,282. Those amounts, I understand, are in dispute, there is litigation affecting them, and I don't know whether the Company eventually will have to pay the amount or not. It shows Federal income tax still unpaid of \$16,555 and employees' redemption funds and miscellaneous items of \$25,120. Now, the Company also has on [fol. 464] hand certain stocks of other companies, the Martinez-Benicia Ferry and Transportation Company and the Rodeo-Vallejo Ferry Company. I have the balance sheet of the Rodeo-Vallejo Ferry Company as of August 31, 1937, which shows a net book value of its assets, excluding inter-company accounts, of \$80,125. The Martinez-Benicia Ferry Company's balance sheet shows a net book value of \$85,281. Now, the Company has certain lands which will not revert to the counties upon termination of its franchises. Those lands are carried on the books, so I figure it, at \$57,053. Now, the total current assets I have just enumerated and these book values of these stocks of the subsidiary companies and the book value of the non-operative land, you might say, aggregates \$861,853. Deducting from that the current liabilities I just enumerated and deducting that figure in turn from the capital stock outstanding would leave a balance of \$3,273,220 which would represent, so it seems to me, the amount of the stockholders' interest that must be paid off before the expiration of the franchise.

Now, the annual income necessary to pay off the bonds and to pay the interest on the bonds I have figured will total, over the remaining life of the bonds, \$4,214,983. That figure



includes the redemption of bonds at the call prices specified in the trust indenture plus the annual interest payment necessary on the principal amount of the bonds. Dividing that total figure by 10 years, which is approximately the remaining life of the franchise, would result in an annual charge necessary to redeem the bonds and pay the interest of \$421,498. Now, that figure of \$3,273,230 which I designate [fol. 465] noted as the net interest of the stockholder to be amortized over the next 10 years, plus a dividend, first at an assumed rate of 6 per cent annually, using the present value totals, would amount to \$487,806. The operating expenses of the Company for the 12 months ending October 31, 1937, excluding depreciation, considering only the cash expenses, come to \$356,901. I have estimated income taxes necessary on this basis at \$30,000, and a reduction in the 2 per cent gross revenue tax by reason of decreased earnings, of \$8,000, which would make total cash requirements of the Company, \$1,288,205.

Now, the company receives from various other companies, for pipe line privileges, and so forth, annually \$6,022. I estimate that of the dividends it will pay on its stock it will get back from the holding company, by reason of the fact that the operating company owns the stock of the holding company, an annual amount of \$35,000. This would leave a balance of \$1,247,183 necessary to be raised from bridge tolls. Exhibit 5 shows total operating revenues from bridge tolls, both bridges, of \$1,676,056, which figure is \$428,000 in excess of the amount I just developed as the amount necessary to be raised from bridge tolls.

Q. Just a minute, I believe you have those figures typed, have you not?

A. Yes.

Q. Have you them in such shape that they could be introduced as an exhibit and handed to the parties?

A. Yes, they are.

Mr. Rowell: I will ask that that material be received as the next exhibit.

[fol. 466] Commissioner Riley: If there is no objection, that will be received as Commissioner's Exhibit No. 22.

(Here follows Exhibit No. 22—page 1.)

[fol. 467]

Commission Exhibit 22  
American Toll Bridge Company  
Estimated Cash Requirements  
(Carpines and Antioch Bridges)

1	Bonds outstanding Oct. 31, 1937.....	\$3,600,000	
	Less—treasury bonds.....	108,500	
	—retirement fund.....	126,000	
	Balance.....		\$3,365,500
2	Bonds outstanding.....	\$3,719,593	
	Add—other liabilities.....		
	Current.....	51,347	
	Prepaid rentals.....	61,175	
	2% gross revenue tax unpaid (Litigation).....	251,282	
	Federal income tax.....	16,556	
	Employers' retirement, etc.....	25,120	
	Sub-total.....	\$4,135,073	
	Deduct—resources.....		
	Current assets.....	512,046	
	Prepaid expenses.....	127,348	
	Book values:		
	Rodeo Valley Ferry,		
	Aug. 31, 1937.....	80,125	
	Martinez Benicia Ferry,		
	Dec. 31, 1936.....	85,281	
	Non-bridge lands, Oct. 31, 1937.....	57,063	861,853
	Balance.....		<u>\$3,273,220</u>
3	Annual income necessary.....		
	Bond interest at 5½% and bond retirement		
	(Avg. for 10 yrs.).....	421,498	
	To amortize \$3,273,220 in 10 yrs. plus 8%		
	annually.....	487,806	
	Operating expenses.....	356,901	
	Income tax.....	30,000	
	Less—reduction in 2% tax.....	(8,000)	
	Total requirements.....		\$1,288,205
4	Sources of revenue.....		
	Rents for use of bridge.....	6,022	
	Proportion of A. T. Co. of Calif. income.....	35,000	
	Bridge tolls.....	1,247,183	
	Total sources of income.....		<u>\$1,288,205</u>
5	Bridge tolls—12 mos. ending Oct. 31, 1937.....	1,676,056	
	Bridge tolls—above tabulation.....	1,247,183	
	Balance.....		<u>\$428,873</u>

[fol. 468] Q. Have you anything to add, Mr. Coleman?  
Or, I might ask you this, what have you to say as to the propriety of assuming the stock to have a value equal to its par value of \$1 per share?

A. It is difficult, or I might say impossible, to obtain the amounts actually contributed in the first instance by stockholders of this Company, due to the fact that a large portion of the stock was distributed by the holding company acting on behalf of the operating company. If you will recollect, in Exhibit 1 I pointed out that some shares of stock were sold by the holding company. Those shares in the first instance came on the operating company's books at a figure of \$1.60 a share. I have reason to believe those shares originally were sold for \$2 a share. Whether or not that differential of 40 cents a share, representing commissions paid to the salesmen, got onto the operating company's books I don't know. It was not clear from the operating company's books and I didn't have access to the holding company's books—they were in Delaware. Further, the original books of the Company failed to include descriptions of some of the entries and as to certain items on those books I was unable to determine whether or not the assets or items that came onto the Company's books really represented consideration received from the sale of the stock.

Now, if you will turn to page 16 of Exhibit 1, I developed the total there, presumably representing proceeds from the sale of the stock, of \$3,493,228.59. Incidentally, in typing the exhibit there was an error there and that figure should be changed to \$3,393,228.59. As I stated, I am not satisfied that figure represents the total proceeds received. How- [fol. 469] ever, the fact remains that at the outset some stock was sold at a premium of \$1 per share. Other stock issued to the holding company in exchange for assets—was issued in exchange for assets which originally were set up at a figure of \$10,000,000. That figure subsequently was written down to some \$600,000, the write-down being charged against the premium paid by those who paid cash for their stock. In other words, as time went on the Company, through adjustments and otherwise, used up this premium some stockholders paid, so that at the present time, according to its books; the stock stands there at par with no allowance for either premium or discount on stock appearing on the books. For that reason I have taken the stock at par.

Q. Well then, the par value of the stock would approximately represent, in your opinion, the net proceeds received from the issuance of the stock, is that correct?

A. It would represent the net proceeds now set up on the books of the Company, you might say. In other words, as they adjusted the proceeds from the sale of the stock they concurrently adjusted the assets of the other side, so that if you take the par value of the stock plus the net proceeds received from the initial sale of bonds, plus amounts originally borrowed from the Rodeo-Vallejo Ferry Company, the total of those three items will be approximately the total reported investment at this time in the fixed assets of the Company.

[fol. 470] Mr. Thelen: Well then, I will call Mr. Mitchell.

STEWART MITCHELL, recalled.

Cross-examination:

Mr. Thelen: Mr. Mitchell, in outlining your earlier connections with matters relating to the Carquinez Bridge, I understood you to testify that you had had a hand in the preparation of a report which was prepared in 1929 by the California Highway Commission for submission to the Legislature; that is correct, is it not?

A. That is correct.

Q. And as I understand it, Mr. Mitchell, this was a report that related to various toll bridges in California, including the Carquinez Bridge and the Antioch Bridge?

A. Yes, sir.

Q. As I understand it also, you did quite a little of the work in connection with that report?

A. That is correct.

Q. Then in so far as the Carquinez Bridge and the Antioch Bridge are concerned, you actually did a good deal of the work shown in this report, didn't you?

A. That is right.

Q. It is a fact, is it not, that that report was transmitted by C. H. Purcell, the State Highway Engineer, to Mr. E. B. Meek, then Director of the Department of Public Works, and then transmitted by Bert Meek to the California Highway Commission?

A. That is right.

Q. Now, in that report, Mr. Mitchell, you considered both the Carquinez Bridge and the Antioch Bridge, did you not?

A. Yes.

Q. And then, as I understand the matter, you proceeded to determine the present value of the investment in the Carquinez Bridge?

A. Yes.

[fol. 471] Q. And it is a fact, is it not, that at that time you reported as follows—I will now read from page 67 of the report—

“Combining the value of the stock with the funds necessary to retire the bonds and not considering the Antioch Bridge, we arrive at the amount required to take over the Carquinez Bridge at the present time, which is \$10,676,142.”

And that statement represented your judgment as to that amount at that time, did it not?

A. Yes.

Q. And then it is true, is it not, that the report continued in the next paragraph—

A. May I qualified that?

Q. Yes, certainly.

A. That is our judgment from the stockholders' viewpoint.

Q. Yes, from the stockholders' viewpoint. It was not, however, from the viewpoint of the State, for instance, if it should desire to purchase the bridge?

A. No; we have taken up other values later on.

Q. Then the report continues, does it not, on the same page,

“This sum may be considered an estimate of the present value of the Carquinez Bridge from the stockholders' point of view, assuming that the Antioch Bridge had not been built or acquired.”

A. That is correct.

Q. And then later on you proceed, do you not, somewhere in this report to determine the value of the combined bridges, that is, the value of the Carquinez Bridge and the [fol. 472] Antioch Bridge, taking them together, from that same point of view, on page 70 perhaps?

A. That is the Antioch Bridge on page 70.

Q. Yes: You determined then, did you not, on page 71, the value of the combined bridges from that point of view?

A. That is correct.

Q. What was that value that you there found?



Q. I take it that you have no doubt at this time as to the question of the accuracy of those figures on the bases on which you prepared them at that time?

A. That is correct, with the information that was available at that time.

Q. And at that time, as I understand it, Mr. Mitchell, you had access, did you not, to the records of the Toll Bridge Company?

A. In that case we are just quoting, of course, what the securities were shown at and what the market value and the other statistics of record at that time.

Q. That is, the statistics of the American Toll Bridge Company?

A. Hes.

Q. Now, I understand that a number of years later, Mr. Mitchell, you had a very important part in connection with another report which is known as the report of October 20, 1932, entitled "Report on Investigation of Carquinez Toll Bridge"?

A. That is right.

Q. That report was transmitted, was it not, by Mr. C. H. Purcell, State Highway Engineer, to Earl Lee Kelly, Director of Public Works, on October 21, 1932?

A. That is right.

Q. And then transmitted by Mr. Kelly to the Governor on the same day?

A. Yes, sir.

[fol. 473]. Q. I understood you to testify the other day that as to that report, "I made a further report on the Carquinez Bridge myself in 1932". I take it from that that this report is very largely your own work?

A. That is right, that is correct.

Q. Would you tell us, please, just what part you played in the preparation of that report?

A. The details of preparing the report were practically all under my direction in that case, subject, of course, to the approval of Mr. Purcell and my immediate superior, the bridge engineer.

Q. You don't happen to have a copy of that report here, do you?

A. No.

Q. Well, we can use it together, I think. That report states on page 8 as follows:

"Attention is again called to the fact that the American Toll Bridge Company owns and operates as one project both the Carquinez and Antioch Toll Bridges and it is, therefore, necessary to consider the future earning power of the two bridges in order to arrive at a reasonable price for which the stockholders of that Company could dispose of the Carquinez Bridge alone."

That statement is correct, is it?

A. Yes. I might point out, of course, in both of these reports we are considering the purchase, that is, the price, of the bridge, and not, of course, the rate base.

Q. You were trying to find out what would be a fair purchase price for those bridges, as I take it?

A. Yes.

Q. In fact, following up that very matter, it is said,

"A fair purchase price based upon its earning power is the only one that is acceptable for a property of this kind [fol. 474] which has no intrinsic value other than potential earnings."

And further on the same page you say, do you not,

"This report will, therefore, deal primarily with the data and means of arriving at the estimated value based on probable future earnings"?

A. That is correct. Of course, the fundamental idea back of that report was that the two sides could not agree on the selling price or purchase price unless they both considered what they were liable to get out of the investment if they continued with it and, on the other hand, if they sold it, what they could put their money out at to bring in a profitable return.

Q. Certainly.

A. No other side was considered in that report.

Q. Then continuing on page 37 you stated, did you not,

"It must be recognized that those who initiated and developed a project such as these toll bridges are entitled to be rewarded for their foresight and for the risk they have taken. The public, having held off until the results are more

or less assured, must expect to pay for the pioneering of others."

You still believe that, do you not?

A. I don't think there is any question about that.

Q. Then, as I understand it, Mr. Mitchell, you report on page 38 of this report the total amount which the stockholders would expect to receive in return for their interest in the property, do you not?

A. Yes.

Q. And would you kindly read for the record what your conclusions were on that subject?

[fol. 475] A. This purchase value, which is the one adduced on the assumptions that are previously brought out in the report and amounts to \$11,032,140, covers the interest of the stockholders in both the Carquinez Bridge and the Antioch Bridge. The final step is to determine at what price they may be expected to give us their interest in the Carquinez Bridge and still operate the Antioch Bridge.

Q. And you have some figures then, have you not, in fine print near the top of page 38; would you mind reading those, or if you prefer I will read them?

A. The figures I refer to are the total amount which the stockholders would expect to receive in return for their interest in the property, therefore, is as follows: Net value of common stock after deducting fixed charges (present worth of future earnings on an 8 per cent interest basis), \$5,162,900; retirement of existing bonds at call price, first mortgage at 102½, \$3,843,750; second mortgage at 105, \$1,470,000; present worth of required payments to amortize bond discount and expense, \$555,490. Total fair purchase value, the sum of those figures, \$11,032,140. Of course, I would like to call attention to the fact that in that report there are certain assumptions made as to a fair rate of return and other things like that, that were purely put in there to show more what the problem was rather than to say that would be the correct value because, as I pointed out, this is a matter that took considerable more study than we were able to give it and the whole report is mainly to point out how this value should be arrived at, rather than to state those figures were the only ones to be taken. Of course, the public naturally takes the figures that you put down, regard- [fol. 476] less of what you say about it.

Q. You didn't use any assumptions that you thought were unfair, did you?

A. At that time we thought they were roughly what was reasonable.

Q. You would not have consciously assumed anything that you thought wasn't fair or just, of course?

A. No, not at all; of course, there was still a problem which we assumed we could not settle, to say whether 7 per cent was a fair return or 8 per cent, or a matter of that kind, and so we had to assume certain figures, of course.

Q. As I understand you, Mr. Mitchell, you then reported a total fair purchase value for both bridges of \$11,032,000?

A. Yes.

Q. Would that also include the Antioch?

A. That is correct—that is, the Company's earnings from the bridge property.

Q. Later on you deducted an amount for the Antioch Bridge so as to get finally to the net purchase price of the Carquinez Bridge?

A. That is right; we wanted to show that the stockholders, if they retained the Antioch Bridge without—made it pay for itself, that they would be willing to let the Carquinez Bridge go for this particular amount.

Q. And then the amount which you finally reported as the net purchase price of the Carquinez Bridge was \$10,288,840?

A. That is correct.

Q. Going back a minute now, Mr. Mitchell, to the 1932 figure, I assume what you were trying to do was to get an estimate which would be fair to the public and to the State, as well as the Company?

A. That is what we were seeking for, yes.

[fol. 477] Q. As I understand it, you are permanently in the employ of the Department of Public Works?

A. Yes, sir.

Q. And were loaned by the Department to the Railroad Commission for the purpose of the present proceeding?

A. That is right.

Q. Certainly. Now, in your report which is Exhibit 3 in the present proceeding, as I understand it, you reported that the amount of money which was actually expended by the Company on the Carquinez Bridge, as shown by the books of that Company, was \$7,863,451.17?

A. Yes.

Q. Now, what I wanted to know is this: You haven't any doubt that the Company actually expended that much money, have you, Mr. Mitchell, whether they might have done it wisely or not?

A. I am not questioning the validity of those charges.

Q. Yes. That is what I thought.

A. In my report.

Q. And you haven't any doubt, have you, that the Company, in spending that money, paid it out in good faith?

A. Not at all.

Q. And you haven't any doubt, have you, that the Company, when it paid out that money, paid it out because it thought it was necessary to do so at the time?

A. That is true.

Q. Now, I would like to read a sentence, Mr. Mitchell, from the letter of transmittal which appears on page 1 of your report. It is in the first paragraph, the last sentence, reading as follows: "In order to obtain a suitable standard by which to measure the reasonableness of book costs, I have estimated the cost of construction based on the assumption that sufficient finances were available from the beginning to [fol. 478] permit the letting of all major items of work to contract by competitive bids." Now, as a matter of fact, Mr. Mitchell, that assumption, unfortunately, is contrary to the actual facts as they then existed, is it not?

A. That is correct.

Q. As a matter of fact, the Company could not get enough money under the conditions which then existed so as to have enough available from the beginning to permit the letting of all the major items to contract by competitive bidding?

A. As I so stated in the report.

Q. As a matter of fact, in the actual construction of the Carquinez Bridge, Mr. Mitchell, it was necessary, was it not, for the Company to secure practically \$1,000,000 from sources such as sale of stock and earnings of the ferry and the personal fortunes of the promoters, before they were able to sell any of their bonds?

A. Yes, that is correct.

Q. That is the way it actually worked out in practice, is it not?

A. Yes.

Q. In this same sentence, Mr. Mitchell, you state that you have assumed that sufficient finances were available from



the beginning. What did you mean when you used the word "beginning" in that sentence?

A. That is, from the very start of construction.

Q. And at what time did you assume that would be?

A. I assumed that would be, as I later stated in the report, the construction period of two and a half years, which would be two and a half years before the date of opening on May 21, 1927.

Q. About November 30, 1924?

A. Yes.

[fol. 479] Q. And you assumed in your report that how much money would be available in November, 1924?

A. Well, the fact, as stated in the report submitted today under interest during construction, I have assumed the entire amount to be raised by a bond issue at that time so that there would always be sufficient money on hand to pay on the contracts as the money became due.

Q. Do you believe, as a practical matter, Mr. Mitchell, that it would have been possible for this Company in constructing the Carquinez Bridge and the Antioch Bridge to get all their money from the sale of bonds and have it all available at a certain date without having received any money from other sources such as stock or personal fortunes?

A. Under the circumstances, it was not—would not have been possible, no.

Q. You have assumed, as I take it, what one might call a somewhat ideal condition, have you not?

A. I have assumed the only condition whereby you could determine certain definite construction costs, those costs that anybody could consider reasonable, so far as they go, at least.

Q. But these ideal conditions, unfortunately, did not exist, did they?

A. No—well, I wouldn't say ideal conditions; I might say if the bridge was being built by a going concern, say the Southern Pacific, for instance—not the State, because in the case of the State, of course, there would be certain deductions from my costs here—but I had to have some premise on which to base construction prices used in this report and I pointed out in the report that those conditions did not actually exist so far as actual construction of the bridge was concerned.

[fol. 480] Q. Of course, what you have assumed is quite far from the facts as they actually existed?

A. Yes.

Q. As a matter of fact, your plate No. 2 shows quite clearly and in an interesting way, does it not, a substantial amount of actual construction work done some little time before November 19, 1924?

A. Yes, it shows a great deal of delay throughout the work due to lack of finances, as I pointed out.

Q. It shows actual construction work being started on the job in April, 1923?

A. Yes, that is stated in my report.

Q. It is a fact, is it not, that work of promotion, engineering and other preliminary work started back in September of 1922?

A. I have a report on preliminary investigation construction work starting April, 1923. I don't know at this time about any previous work, but it is not important, I guess.

Q. As a matter of fact, Mr. Mitchell, have you had occasion to know that the chief engineer was appointed as early as September, 1922?

A. I know from discussion with those who were interested in it at the time that the first thought went back to 1918, as far as that goes, and considerable discussion had.

Q. As far as engineering work and the actual promotion work and all of that are concerned, it antedated April, 1923, by quite a number of months, did it not?

A. It is very likely, yes.

Q. Now, as a matter of fact, Mr. Mitchell, do you know the date on which the franchise was issued for the construction of the Carquinez Bridge?

A. Yes; on February 5, 1923.

[fol. 481] Q. February 5, 1923. That franchise provided that the work of actual construction should start within 4 months, did it not?

A. Yes, I believe that was the terms of the franchise.

Q. Then if your construction work had not started until November 30, 1924, it is quite obvious that the Company would not have complied with the provisions of its franchise?

A. Oh, no doubt about that.

Q. And the franchise, therefore, would have been void, would it not?

A. That is correct.

Q. Did you in your assumption assume that the necessary War Department permit had been acquired by November 30, 1924?

A. I didn't take that into consideration.

Q. You say you did not?

A. No, I did not.

Q. It was necessary, however, was it not, to secure a permit from the War Department before the construction work started?

A. Yes.

Q. You know, don't you, that there was considerable opposition before the War Department to the issuance of these permits?

A. I know there was a great deal of objection, of course.

Q. And that necessarily took time to work the thing out, didn't it?

A. That is correct.

Q. But you didn't take that particular matter into consideration in your assumptions?

A. No.

Q. Referring a moment to the question of the opposition, Mr. Mitchell, there was opposition, was there not, to the original granting of the franchise by the Board of Supervisors of Contra Costa County?

A. I understand, and I think it is shown in the original [fol. 482] report, that there were certain other companies seeking a franchise at the same time for a bridge across the Straits at various locations nearby.

Q. As a matter of fact, you show in your 1929 report, do you not, Mr. Mitchell, that the Dillon Point Development Company applied for a franchise on September 14, 1922, from Dillon Point to Eckley; and another company, known as the San Francisco Transit Company, applied both on September 14, 1922, and March 5, 1923, for a franchise between the same points?

A. Yes, sir.

Q. And that other company, known as the Crockett Land & Cattle Company, made application on March 5, 1923, for a franchise for a bridge from a point near Crockett to a point near the Great Western Power Company's bridge?

A. Yes.

Q. And, as though those troubles weren't sufficient, a little later, on July 27, 1926, the Northern California Development Association presented an initiative petition to the Board of Supervisors, and they denied it, and then the matter was taken by the company to the Supreme Court before they could get it cleared out of the way?

A. Yes, there is no doubt all these questions came up. The history was obtained at that time.

Q. Isn't it true, Mr. Mitchell, referring again to the question of opposition, that this Company had visited upon it a very strenuous and effective opposition from the navigation companies?

A. I understand that is true, too.

Q. Well now, Mr. Mitchell, in view of all the opposition of these various types, do you believe people would have been willing to supply all the necessary money by the sale [fol. 483] of bonds without any underlying stock money or any other money, but would just come in and supply all the money from the sale of bonds?

A. No, I have never presumed that at all.

Q. As a matter of fact, you know that it could not have been worked that way?

A. No, under the circumstances, it was impossible, of course.

Q. I would like now, Mr. Mitchell, to refer to your recapitulation on page 27 of your report. As I understand it, Mr. Mitchell, from that recapitulation, you accept without challenge a number of the items shown in the Company's books?

A. Yes.

Q. As having been spent. And among those items, as I understand it, is an item for superstructure amounting to \$2,822,498.87?

A. Yes; that work was let to contract by competitive bids, and our estimate seemed to come so close to it I recommended using the original figure.

Q. You accept also, do you not, the cost as shown on the Company's books for toll house amounting to \$17,092.37?

A. Yes, we had no means of checking that, and it is a small item, and we assumed it to be correct.

Q. You also accept the cost shown on the books in the sum of \$35,322.70 for approach work?

A. Yes, we accept that for the same reason.

Q. All right, I understand also, Mr. Mitchell, you accept what you believe to be the book costs for the presently existing fender?

A. Yes.

Q. On the other hand, I understand that you challenge a number of items of which the first and the largest is the item for piers and foundations?

A. That is correct.

Q. Then a relatively small item of \$11,460.76 for other buildings?

A. Yes.

[fol. 484] Q. And I understand also you do not make allowance for what you call the temporary or the initial fender?

A. No.

Q. And also that you challenge the costs shown under the head of various overboards?

A. That is correct.

Q. Well, suppose we consider those in turn, then, one after the other.

Q. I understand, however, as to the next two contracts, Mr. Mitchell, you do have question concerning them—the Duncanson & Harrellson contract of \$655,580.36, and the Raymond Concrete Pier Company contract for pier foundations amounting to \$130,023.52?

A. Those are the major contracts which occurred in the sub-structure work where our discrepancy does exist.

Q. Well, suppose we analyze those two contracts a little and see just what the facts were in connection with them. As to Duncanson & Harrellson, that was a well known and responsible contracting firm here in San Francisco, was it not?

A. Yes.

Q. In cases of that kind, Mr. Mitchell, aren't contracts frequently let on a cost plus basis for the very reason that I have stated?

A. Of course, that would not apply to any recent jobs, because in most cases they are handled by corporations or public bodies which are able to make a pretty thorough exploration to start with before the contracts are let, so that the purely exploratory work would be on a cost plus basis but not the construction work.

Q. This work done by Duncanson & Harrellson, to which



we are referring, Mr. Mitchell, did include a substantial amount of exploration work, did it not?

[fol. 485] A. Yes, the books show \$42,000 for exploration work.

Q. And as I understand it, you do not challenge that part of the money paid to the Duncanson & Harrellson people?

A. No.

Q. It is simply the remaining cost?

A. I am not directly challenging any of their work or their reliability or anything else. It is only quite evident, of course, from the progress chart covering the period of time they were engaged in the work that there was considerable stopping and starting. In other words, I assume that delay was due to lack of finances at the time, that they probably had to stop and start as the money was available. And as I pointed out in my report, it is a well known fact that a rather major extra cost resulted from these particular delays. From the progress chart, which is page 14 in my Exhibit No. 3, you will notice in connection with Pier No. 4 that they drove a cofferdam and there was some delay between that and the time they started to work on the excavation, again some delay on the pile driving work, and then a long delay before they poured the tremie seal, and then there was a long delay between the time that the tremie seal was poured before the company was able to finance the remainder of the project and let the contract to the American Bridge Company to repair that pier, and that is the time during which the teredo worked on the wood piles of the cofferdam and practically ruined them. I am not saying it was not good engineering to use untreated piles, because if the work had been able to be carried right through they would have been as satisfactory as anything else; but it is evident from the records and from the general observation of the conditions that there [fol. 486] was a large extra cost due to that fact which, of course, doesn't show up in my estimated costs of construction.

Q. Now, isn't it a fact, Mr. Mitchell, that it was this work which the Duncanson & Harrellson Company did under considerable difficulty that made it possible in the month of April, 1925, to finance the job to completion by the sale of bonds and to have contracts entered into with the Missouri Valley Bridge & Iron Company to complete the

foundation work and with the United States Steel Products Company to put up the superstructure?

A. I understand, of course it was impossible to raise the finances through the bond issue until the Company had expended a considerable portion of its own money and gone far enough to show that the work was more or less tested.

Q. Mr. Mitchell, are you prepared at this time to testify that, under the circumstances as they actually existed and considering the amount of work actually done by Duncanson & Harrellson and considering also that their "plus" was only 6 per cent instead of the usual 10 per cent, that they were overpaid for what they did?

A. 6 per cent is a fair return, I understand.

Q. Well, do you believe under all the circumstances, that Duncanson & Harrellson were overpaid for what they actually did?

A. I don't think that is the question at issue at all; they probably earned all they got, as far as that is concerned.

[fol. 487] Mr. Thelen: Mr. Mitchell, I believe that we had left for consideration among the major contracts yesterday afternoon the Raymond Concrete Pile Company, the contract covering pier foundations.

A. Yes, sir.

Q. If you will kindly turn to page 13 of your report, you show in connection with that contract a cost of \$110,023.52, do you not?

A. Yes.

Q. As a matter of fact, of that amount, \$60,023.52, being all of it except \$50,000, was spent, was it not, in actual construction work on piers 6, 7 and 8, I believe?

A. Yes.

Q. And were you in your investigations able to find the actual detailed statement on which that payment was made?

A. No, I didn't have that available.

Q. Well, assuming, Mr. Mitchell, that a detailed statement itemizing that sum of \$60,023.52 was submitted by the Raymond Concrete Pile Company to the American Toll Bridge Company on April 10, 1925, and that the Company, after examining the detailed statement, honored the amount shown and issued two checks to the Raymond Concrete Pile Company totaling \$60,023.52, would you be inclined to criticize the amount which was paid on those detailed statements?

A. Well, I have not, of course, gone into any such detail as that. It was impossible for me to check those things item by item. I could not even make a statement on that.

Q. Are you advised, Mr. Mitchell, that of that sum of \$60,023.52, all except \$1200 was paid by the Raymond Concrete Pile Company to the Missouri Valley Bridge & Iron Company, the sub-contractor who had actually done that work?

A. No, I had no record of it.

[fol. 488] Q. You don't know that all of that money was paid to them and that of that money the Raymond Concrete Pile people kept for themselves only \$1200? You didn't know that?

A. No, I have no details of the contract.

Q. And having no details, of course, I would imagine you would not challenge the item because you don't know the detailed facts?

A. No, I am not challenging any of those individual items.

Q. Now, as to the \$50,000 which was paid to the Raymond Concrete Pile Company in addition to the amount we have been just considering, do you know what that was paid for?

A. No, only in a very general way, as I mention in the report. The records of the Company stated it was in settlement of a suit or claim.

Q. Well, if it should appear, Mr. Mitchell, that this amount was paid in settlement of a claim of the Raymond Concrete Pile Company and that, among the other items of that claim, was an item for engineering services performed by the Company throughout the period of 4 months in connection with the plans and specifications, and also an item for bringing the Missouri Valley Bridge & Iron Company, the ultimate contractor, into the picture; also an item for bringing two bonding houses into the picture, which later were instrumental in the purchase of the bonds; also an item of compensation for breach of contract as to which the Raymond Concrete Pile Company claimed something in excess of \$850,000 damages for breach of that contract—bearing in mind all those items, would you be inclined to question the amount of the settlement which was finally reached, of \$50,000?

A. No, I am not questioning any of the details of the actual cost in my report at all.

[fol. 489] Q. The Raymond Concrete Pile Company is a very responsible contractor, is it not?

A. Yes.

Q. Has been engaged in deep water construction in various portions of the United States, has it not?

A. Yes.

Q. In fact, it is one of the largest contracting concerns in the United States engaged in that line of work, isn't it?

A. One of the largest, yes.

Q. Now, Mr. Mitchell, I would be obliged to you if you would refer to your Table II on pages 17 to 19. In that table you estimate, do you not, what you believe would be a reasonable cost of constructing the piers and foundations of the Carquinez Bridge?

A. Yes.

Q. Now, Mr. Mitchell, let us go a little more in detail into this Pier 4. What allowance did you make for the driving of guide piles, guides?

A. I considered that the general prices allowed there would cover that amount of work. In other words, lumped it in.

Q. Guides, the item of guides includes material, doesn't it, plus the driving of those guides?

A. I think the amount of material, though, is small in comparison with what you have to estimate for the rest of the factors of piling and waling.

Q. It is a fact, then, that you made no specific and particular allowance for the guides?

A. I added a percentage to the other items of piling, the quantities that I figured would cover any miscellaneous items like that.

Q. What was the percentage which you thus added?

A. I haven't got the figures now, the exact amount I figured on that.

[fol. 490] Q. Then, as a matter of fact, Mr. Mitchell, the prices here used by you are bid prices, are they?

A. Yes.

Q. And a bid price is not necessarily an actual price at all, is it? That is, a bid price is not necessarily the cost, is it?

A. The sum of the bid prices would be actually the cost, yes.

Q. Isn't it true the bid prices may be either above or below the cost of doing the work?

A. It can be unbalanced, of course; but here we tried to allocate the thing in reasonable proportion to each item as it should be allocated.

Q. Is your estimate an estimate of cost, or is it merely an addition of bid prices?

A. It might be both; it is an estimate of cost, certainly.

Q. Well, which is it, I am asking you?

A. An estimate of cost.

Q. As I understand it, Mr. Mitchell, there is no specific allowance for working platform contained in your estimate?

A. That is true.

Q. How much did you allow in your estimate for brace piles in the cofferdam?

A. I don't know just what you are referring to specifically in that case.

Q. Well, did you or did you not make allowance for brace piles for bracing the cofferdam?

A. You require, of course, guide poles and interior waling and bracing, no question about that. It has been allowed for in here, yes.

Q. My question was, how much did you allow for the brace piles?

A. They are included in the cost of waling.

Q. Did you make any separate allowance for the brace piles?

A. No, all lumped together.

Q. You say they are included in the cost of waling. How [fol. 491] much of the cost of waling represents the cost of the material and the labor or installation of these brace piles?

A. I couldn't say at this time.

Q. How much did you allow for the anchorage of the cofferdam?

A. There is no specific allowance made for the anchoring of the cofferdam, that is not covered by the cost of general expense.

Q. Such anchorage would be necessary, would it not?

A. A certain amount would be, yes.

Q. But if it is here anywhere, it is under this general expense item, is that right?

A. Yes.

Q. How much do you think would be a proper allowance to be included in general expense for anchorage of the cofferdam?



A. I couldn't say at this time, I haven't the detailed figures to go into it.

Q. How much did you allow in your estimate for the rental of the pile driver or drivers used in connection with the construction of that cofferdam?

A. Well, I might answer all these items by simply saying that we did take all we could get on that subject and lumped it together to determine what, in a general way, is a fair expense for general expenses; and I can't say it is reflected in here in any other way.

Q. Mr. Mitchell, did you ever have experience in the State of California in driving a cofferdam on a job that is comparable to Pier No. 4?

A. Well, I believe the work on the Klamath River is somewhat comparable.

Q. That is in Oregon, is it?

A. No, in California.

Q. What was your part in connection with that job?

A. I was resident engineer on the work.

[fol. 492] Q. That was the job which later culminated in a lawsuit, was it not?

A. Yes.

Q. There was considerable difficulty, was there not, that developed in connection with the construction of that job?

A. That is correct.

Q. How large a cofferdam was installed in connection with that job, Mr. Mitchell?

A. As I recall, about 40 by 30 feet, something of that order.

Q. That was a very much smaller cofferdam than that installed in connection with Pier No. 4, was it not?

A. Yes, it was smaller.

Q. Is that the only experience which you have had, either as contractor or as supervising engineer, in connection with the installation of a large cofferdam.

A. Well, I believe none larger than that in my own experience. There are several in Oregon of a similar nature.

Q. I notice here you used a cost of \$60 per thousand for board measure. Do you know whether or not, as a matter of fact, that was the going rate in this vicinity at that time?

A. No, I have no specific information on that.

Q. Isn't it a fact that the going rate at that time was \$85 per thousand delivered at ship's tackle?

A. I haven't got that information.

Q. Well, do you happen to remember where you got your \$60.

A. I took it from various prices that the State had for similar work at the time.

Q. Where was that other work?

A. I couldn't say now; it was just put down as I got it, the prices obtained by the design department at that time for lumber in this vicinity.

[fol. 493] Q. How much did you include for struts in connection with that particular item?

A. I haven't the details between the wales and the struts; it is all lumped together here.

Q. What allowance did you make for uprights and for bracing?

A. Well, it presumably includes all the uprights, struts and wales, but I haven't the details of how much each one was.

Q. Then I take it prior to the time when you prepared this estimate you have given me, you never made the type of estimate which a contractor would make in deciding whether or not he would bid on the job?

A. Yes, I believe that is the way this estimate was made. In other words, we are not trying to follow out the thing historically, only in a general way, that is, to tie in with the time of construction and under the assumptions made in this report. But we did study the general costs and the cost of plant and equipment and we have proportioned it over the costs as a contractor would do in making up an estimate.

Q. Don't you believe the contractor, in preparing to bid on a job like this, Mr. Mitchell, would have to consider all these individual items unless he were going to make a very fatal bid?

A. He would consider the items, yes, and we have considered them in what we figure is the general allowance for the entire sub-structure.

Q. But I take it you are unable at this time to state what consideration in dollars you did give to these various items?

A. No. We could submit that more in detail if you want.

Q. I am asking you what you did in connection with the preparation of your exhibit; I am not asking you to go to [fol. 494] further work in order to submit those details.

I simply want to know what you actually did in connection with the preparation of this exhibit, Mr. Mitchell.

A. Yes, we did go into all the various items of the general plant, equipment, and so forth, as far as we could determine them historically and tried—from that we tried to determine a fair allowance for general charges to spread over the individual items.

Q. In connection with cofferdam bracing, what allowance do you make for hardware, including plates, angles, castings, and so forth and so forth?

A. I figured that would be included in the price of the timber.

Q. Included in the price of the timber?

A. Yes.

Q. How would you estimate the cost of hardware, how much should be included in connection with the bracing of that cofferdam?

A. I would not like to say that at this time, as I haven't the details there, again.

Q. Would you say an allowance of 170,600 pounds would be out of the way?

A. It seems to be a little bit high but I could not determine at this time.

Q. How much did you consider to be proper when you prepared your estimate?

A. I couldn't tell you that, either; I haven't those figures.

Q. How much did you allow for back-filling around the pier after completion?

A. We didn't allow anything for that.

Q. Now, as to this item of unwatering and pumping, \$400, that is rather a major item in connection with a cofferdam, is it not?

A. It very often is; depends on the tightness, of course, of the cofferdam.

[fol. 495] Q. Isn't it true that your item of \$9,200 is absolutely inadequate to cover all of these various items which you are now putting under that head?

A. It may be low with regard to this particular job, but the 20 per cent, I think, is fair enough for the entire job.

Q. I imagine you had no allowance for the submarine diver in connection with cleaning the edges of Pier 4?

A. We had nothing specific for that, no.

Q. In fact, you have no allowance for the wages of any diver at all in connection with Pier 4, have you?

A. No.

Q. Isn't it a fact, Mr. Mitchell, that the allowance for the power bill alone in connection with that item of unwatering and pumping would be likely to run up to approximately that \$400?

A. How much?

Q. \$400.

A. Quite possible, yes.

Q. Then this allowance of \$400, if I correctly understand you, Mr. Mitchell, did not include anything for the installation and removal of the power lines, transformers and pumps and the wages of pump men working 24 hours a day, that is, in shifts, but the operation being 24 hours a day, or for the labor of handling suction, the expense of actual replacement of suction hose and foot valves, insurance on labor or incidental costs?

A. No.

Q. Where in your estimate could we find all of these items?

A. Again I refer you to the general allowance for general expenses.

Q. That is in this item of \$9,200?

A. 20 per cent which is allocated to this is \$9,200, but as I say, it is a general expense of 20 per cent spread over all that in that proportion to all the other items.

[fol. 496] Q. I note you have an item of \$5,500 for overhead and profit in connection with this cofferdam; does that include any allowance for contingencies?

A. Yes.

Q. How much?

A. In general we have allowed 15 per cent for overhead and profit and on the end, after we had totaled up the entire sub-structure, we added 5 per cent again for contingencies.

Q. As a matter of fact, when it comes to the item of premium on surety bond, you did not, in making this estimate, follow the practice, usual practice, of showing that item as a different sum at the end of the estimate.

A. Not in this estimate as it is gotten up here, no.

Q. How much did you allow for the layer of crushed rock on the bottom so as to prevent the concrete from mixing with the mud or clay at the bottom?

A. I don't believe we have allowed for that in this case.  
 Mr. Thelen: I should like to turn now to piers 6, 7 and 8 as shown on page 19 of your Exhibit 3. There were 1 footings, were there not, involved in those piers?

A. Yes, they are so marked that way.

Q. As I understand it, you have allowed \$1 per cubic yard for the excavation?

A. Yes.

Q. As a matter of fact, Mr. Mitchell—of course, you were not there at the time of the construction, were you?

A. Naturally not, no.

Q. In connection with piers 6 to 8, inclusive, did you assume or not assume that it was necessary to erect a cofferdam around each of those footings?

A. I presume it would be necessary to erect some cofferdam around there, yes.

[fol. 497] Q. As a matter of fact, that is the way the work was actually done, was it not?

A. I have no direct evidence, but I assume it would be done that way.

Q. How much, in your judgment, would be a reasonable cost for the installation and subsequent removal of the cofferdams in connection with these particular piers?

A. I would have to look again at the size of the piers. I believe those piers are about 15 by 20, or such a matter, and I see now we assumed that the cost of the concrete in that case would cover the general cost of the cofferdam.

Q. Did you ever hear of the cost of a cofferdam being included in the lump sum price for concrete?

A. Oh, yes, quite frequently—either in that or in the excavation—quite often is the practice.

Q. How much did you allow for cofferdam in this case? 12 cofferdams, the installation and removal?

A. I can't answer that now here.

Q. Would you assume that a figure of \$10,000 would be reasonable for those 12 cofferdams, for the installation and removal?

A. Well, it could be that, though I would hate to confirm that without making some figures.

Q. If that were the case and if that item were included in this cost of concrete, there would only be \$5,790 left for every other item that goes into the concrete, would there not?

A. Yes, that would be correct.



Q. In other words, with these other items you have cut the cost of concrete down to about \$5 per cubic yard. Would that be a reasonable price?

A. No, that would be too low if that is the case.

Q. As a matter of fact, Mr. Mitchell, isn't it a fact that [fol. 498] you did not include anything for the cost of installation and removal of those cofferdams in your estimates as to 6 to 8, inclusive?

A. Well, it appears to be slightly low for those piers themselves, that is, that price; I couldn't say whether it was not included in the bid price for all of those items all the way through. The other piers, the concrete is somewhat higher in proportion.

Q. Coming back to concrete for piers 6 and 8, it is perfectly obvious, isn't it, that that price of \$14 either can not include the \$10,000 cofferdams, or it is way low for the materials and all the other items that enter into the concrete?

A. On these particular piers, yes.

Q. Of course, you would yourself desire that the necessary correction be made there?

A. Not without taking into account that maybe we are low on some of the other costs where the \$14 was used.

Q. Well, if you find any of those as we go along I would like you to draw my attention to them. These particular piers, 6, 7 and 8, had to be back-filled and the false work and the sheet piles removed?

A. I don't know as we took into account the matter of whether they had to be back-filled—don't believe we did.

Q. How much did you allow for the anchorage in connection with these particular piers?

A. We didn't allow anything specifically for anchors in that case.

Q. How much did you allow for the rental of the pile driving equipment?

A. Again, it gets back to the placing of a certain allowance for general expenses into the cost of the concrete.

Q. Is that also in the concrete?

A. Yes, in the \$14 price.

[fol. 499] Q. I think you didn't understand the question, Mr. Mitchell. I asked how many dollars you allowed for cofferdam in connection with the price which you did give for concrete?

A. I can't tell you those figures.

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Q. How much did you allow for de-watering and for keeping the water out?

A. We didn't make a separate estimate of that for this pier, either.

Q. In your figure for excavation how much did you allow for ground swell?

A. I believe the unit prices shown here are sufficient to cover the cost of all those items.

Q. I understand then the answer is that no specific allowance was made?

A. No specific allowance.

Q. How much did you allow for the blanket of crushed rock or gravel over the area to keep the concrete free from mud?

A. No specific allowance.

Q. How much did you allow for removing the false work?

A. No specific allowance.

Q. How much for bracing of the cofferdam and removing the braces?

A. All of these items carried the same thing, the general cost of cofferdams, and no further comment to make other than they are covered as I stated before.

Q. How long did you assume the piles to be which supported the piers, and of what diameter?

A. I don't believe we went into the details of the diameter of piles; we assumed reasonable average cost for driving that many lined feet of piles.

Q. How much did you allow for the diversion of the sewer of the Town of Valona, which sewer emptied into [fol. 500] the Bay at the site of Pier 5?

A. We had no data and we didn't consider it.

Q. No allowance made for that?

A. No, didn't know anything about it.

Q. How much did you allow for the demolition of part of the old approach and viaduct of the ferry at this point?

A. No allowance for that.

Q. Now, let us take an easy one. Suppose we go to Pier 1, your page 17. What did you assume to be the character of the material which was excavated at that point?

A. I believe it is rather rocky, if I recall.

Q. Rather rocky. It was rather an isolated job over on the Solano County shore?

A. I presume at that time that it was.

Q. Now, in your opinion, would \$1 per cubic yard be a sufficient price under those conditions?

A. Yes, because we took it that the material could be deposited right over the side practically.

Q. Isn't it a fact that that \$1 per cubic yard was just a general average that you secured and then that you applied that to the various excavations in connection with the various piers?

A. Yes, that is correct, based on an average of several conditions.

Q. And that is irrespective of the conditions which might govern at the particular piers as to the question of excavation?

A. Yes, that is correct; there might be a slight difference at that pier.

Q. Please tell me what is included in your item of \$14 for concrete in the piers in connection with Pier 2? In other [fol. 501] words, please break down for me?

A. That is the same as before. We allowed an estimate for the removal portion of the cofferdam to allow your concrete to be poured in the dry, and therefore, it is an average price for the job.

Q. Mr. Mitchell, will you please listen to my question and I would appreciate a direct answer if I may. Will you please break down your answer of \$14 into the various constituent items and tell me what the items are and how much is allowed for each item?

A. I beg your pardon, I thought that had been done before at the beginning. We allowed for the cost of materials in the concrete, \$6.80 a yard, and the total cost of the mix at the delivery point at the pier, \$8.60. Then other items covering the handling and placing, overhead and general charges, contingencies and profit, without any cost of forms, brings the cost up to \$13. That we considered a fair price for tremie concrete after comparing it with other similar bids on large work. And in the case of the pier shaft, a slight reduction in the handling and placing, and the cost of form work, brought it up to the total of \$14.

Q. You had a general item there for handling and placing, overheads, contractor's profit and what other items?

A. Overhead and general charges would be 20 per cent, and contingencies and profit 15 per cent.

Q. How much did you allow for the cost of the construction wharf?

A. The construction wharf we allowed in the general charges and in the unit prices.

Q. How many dollars?

A. No definite amount.

Q. Where is it, though?

A. In the general charges and the unit bids for jobs of that kind.

[fol. 502] Q. Now, as to general charges, there is only one place where you have a general charge?

A. Yes.

Q. That is 20 per cent in connection with Pier 4, so that is aside. Now, you say it is allowed somewhere in unit prices. Where in the unit prices is it allowed, and how much is it, and let me put my finger on it so I can find it, please?

A. We didn't go into the details of the method or what wharves would ever be necessary in the cost of these caissons. We simply estimated the unit price based on similar work elsewhere.

Q. How much in any unit price anywhere did you include for the construction of those construction wharves?

A. I couldn't state definitely. As I say, in building up these prices we have allowed this 20 per cent for general charges, which would include general work of building wharves and whatever was necessary in the handling of the job.

Q. If the books of the Company should show that for construction wharf, addition to wharf and trestles, an actual expenditure of \$84,390 was made, would you be inclined to accept that cost?

A. I would accept it—it is quite possible for that item that it is correct. I would not want to add it to my costs, though.

Mr. Thelen: Have you your Exhibit 3 Before you, Mr. Mitchell?

A. Yes, sir.

Q. Will you please turn to page 13. Referring now to the subject of riprap, Mr. Mitchell, I observe on page 13 of the Commission's Exhibit No. 3 an item under date of July 9, 1926, "Healy-Tibbitts Company, rock filling (riprap), \$39,361.92". Do you know how many tons are included in that item?



[fol. 503] A. Not exactly; we tried to find that out as best I could from the records, and the best I could do, I believe, is outlined in the report. We had a record of about 83 cents a ton being paid, and on that basis we backed it up and I believe got about—well, there was a certain amount of riprap which we assumed to be the amount, to which we added the price for placing that amount. Now, that was the best I could get from the Company records.

Q. Well, can you give us any fairly accurate figure of how many tons of riprap were purchased in connection with that transaction?

A. I believe I finally just accepted that \$39,362 and showed it that way on page 19 as actual expense by Company records.

Q. Then you don't know how many tons were purchased in connection with that transaction?

A. No, I have very little detail as to that figure.

Q. Do you know when that particular riprap was placed?

A. That is somewhat indefinite, too; I believe we had an item, or at least a note in the diaries, of placing riprap at the end of 1926 and I assumed that was what it referred to.

Q. Then was it your idea that all the riprap under that contract was placed toward the end of 1926?

A. Yes.

Q. I notice on that same page 13, Mr. Mitchell, an item under date of March 19, 1928, "Healy-Tibbitts Company, furnish rock for fill at fender, 75 cents per ton". Do you know how much riprap was supplied under that contract?

A. I said in the report the exact amount of rock placed could not be obtained at this time but it was stated in the annual report to the stockholders dated April 2, 1929, to amount to 150,000 tons approximately.

[fol. 504] Q. That was an approximate figure, was it not?

A. An approximate figure.

Q. Have you any other basis for using that figure of 150,000 tons?

A. I checked the thing approximately with Mr. Jennings, who worked on the bridge at the time, and while I had nothing definite from him, he seemed to think it was something of the order of the amount of work, but I had no definite figures by which to check it.

Q. That would be as of the date of the stockholders' report, which was April 20, 1929?

A. Yes.

Q. Have you any record of the amount of riprap installed after the date of that report?

A. No, I have not.

Q. Now, how many dollars did you allow for the lighting system on the bridge, both temporary and permanent?

A. I assumed that that was included in the item of toll house and buildings and took that as the figure as shown in the books.

Q. Is it customary, M. Mitchell, to include, for instance, beacon lighting to supply protection to airplanes under the head of a toll house?

A. We didn't find any other item that covered it. It was my intention to use the actual figures for it and not to estimate that, and if there is anything in the books that we have overlooked on that, why, it should have been included.

Q. Do I understand that whatever amount you have allowed for lighting system is included either under toll house or under buildings?

A. Yes, that is the only item we had.

Q. Suppose it should appear, Mr. Mitchell, that the lighting system alone cost in excess of \$10,000, would you think it proper to include it in your \$17,000 item for toll houses [fol. 505] or in the small item you have for buildings?

A. Yes—I mean it would be correct, of course, to modify the total to include that.

Q. The item you have allowed for toll houses and buildings would not be sufficient to include any such item as \$10,000 for lighting system, would it?

A. As I say, if it could be shown that book figures did not include all those items, it would be modified.

Q. How many dollars did you allow for protective devices against fog as ordered by the Government?

A. There is no particular figure for that, either.

Q. Well, whatever amount was expended I assume should be included in the estimate, should it not?

A. That is correct.

Q. And I take it, Mr. Mitchell, that you have had no personal experience in connection with the placing of rock for under water piles 135 feet deep, have you?

A. No.

Q. So you had no occasion, I take it, to see what the going price for riprap delivered at the site of work of that kind actually was in 1925, 1926, and so on?

A. We accepted the record in this case.

Q. Well now, why haven't you allowed the actual expenditure for the temporary fender system?

A. Because I state in my report there I was only estimating the cost of reproducing what was existing at the present time.

Q. And did you assume that a bridge of this type would have been constructed without any temporary fender system?

A. Yes.

Q. Mr. Mitchell, do you think it is proper, when the Company had to install the temporary fender system at a cost of over \$115,000, do you think it is just and proper to just cut out [L. 506] that amount out?

A. You said "had to install"?

Q. Yes.

A. If that could be shown, there is nothing in my report that says it should not be included, no.

Q. Then suppose we follow that matter up a little bit, Mr. Mitchell. Are you familiar with the permits which from time to time were issued by the War Department in connection with the construction of this bridge?

A. No, I haven't a record of them.

Q. Were you advised that the original permit which was issued on April 18, 1923, contained as condition 4 an addition reading as follows, "That such fenders as may be found necessary in the interest of navigation and ordered approved by the Chief of Engineers shall be constructed and maintained at each pier of said bridge by and at the expense of its owners"?

A. I had never seen that, no.

Q. Your estimate was prepared, then, without knowing there was any such a condition in the War Department permit?

A. That is correct.

Q. Now, let us assume, Mr. Mitchell, for the purpose of the next following few questions that you had been in charge of and that you were the president of the American All Bridge Company at the time of the construction of this bridge; and suppose that on November 3, 1926, you had received an order from the War Department to submit plans for a fender for the bridge, for the protection of navigation; would you have obeyed the order?

A. I certainly would.

Q. Well, following along a little further, suppose that on January 17, 1927, you had then submitted to the War Department a plan for the anchorage of barges for a temporary fender system; and suppose that the Department [fol. 507] had issued detailed instructions contained in a letter of that date, instructing you as to the exact location of the barges, the installation of chains and other detailed protection devices; would you have followed those orders?

A. Yes, I would have to.

Q. Suppose a little later, on May 2, 1927, you received a mandatory letter from the War Department insisting that a temporary fender system be installed at once; I suppose you would have followed those instructions also, would you?

A. Follow most of the instructions that the War Department puts out, yes.

Q. Suppose that a little later, on May 14, 1927, you had received another letter from the War Department stating that "A period of approximately one year may elapse before a permanent fender system for the center pier group of the Carquinez bridge will be completed" and that "a more adequate temporary fender system than the existing one should be provided by you without delay," and suggesting the "anchoring of two vessels bow to bow above and two below the group of bridge piers," I am a little bit curious to know what you would have done about it.

A. I am not denying in any way that it was not necessary to do those things in accordance with the War Department orders. I state that my report was based on the premise of reproducing what is there at the present time.

Q. Of course, that estimate is merely theoretical and most distinctly contrary to the actual facts, is it not?

A. I believe not contrary to the actual facts as far as it goes, I mean the facts I have set up in my premise.

Q. Let us consider a few more facts. Supposing on May [fol. 508] 24, 1927, you had received another letter from the War Department instructing that the following things be done in connection with the temporary fender system:

"a. Increased number of anchors for fender hulls and arrangement of anchors as indicated.

b. Provision of increased fastenings at the bows of the fender hulls, to resist central colliding force.

c. Installation of 4 small, lighted barges to mark 35-foot depth of water at M. L. L. W., over anchor chains of athwart stream anchors.

d. Installation of a steel girder strut system between the four piers, both longitudinally and transversely.

e. Installation of a stub pile and steel-girder-fender system on the channel sides of the two north and two south piers, respectively. Consideration will also be given to the placing of large barges for this protection.

f. Hulls to be loaded with sand or rock ballast to a degree consistent with size of hulls used.

g. Guard rails faced with heavy ship channels or steel plates to be placed on channel exposed sides of the four hulls.

h. Special red Neon lights of ample size and distinctive shape to be installed on hulls at up and down stream points of fender system.

i. Suitable fog signals with U. S. Lighthouse Department regulations to be installed at up and down stream points of fender system.

If you had received those further orders in connection with the temporary fender system, Mr. Mitchell, I suppose you [fol. 509] would have obeyed them, would you not?

A. Yes.

Q. It was absolutely necessary, in the face of mandatory orders of that type from the War Department, to obey them?

A. Absolutely.

Q. And to incur the expenditures involved in connection with it?

A. Yes.

Q. And would you think it fair years later, after those expenditures had been necessarily incurred, some one should come along and say, "No, we will just cut out that \$100,000 because we are going to prepare an estimate on an entirely different theory"? Would you think that would be fair?

Q. I am not questioning whether these expenses were actually incurred in any sense of the word. So far as my estimate was concerned, it was for the purpose of affording



information to the Commission in making up its decision as to a proper rate base. I simply furnished these particular figures that I have shown here and, as I have stated in here, I never have taken up the matter of what had to be done on that temporary fender in any way, shape or form.

Q. I suppose you have noticed, Mr. Mitchell, that the Commission's other experts, in their computations, have assumed the figure which you finally show here of \$6,800,000 without any of the omissions which we are developing in the course of this testimony?

A. Yes, I have noted that.

Q. Well, let us turn to another subject, then. Suppose we consider the subject of overheads. You will find that subject first referred to on page 23 of your report. I suppose you have not had any personal experience, have you, in the construction of a privately owned toll bridge?

A. No, sir.

[fol. 510] Q. Also I imagine you have had no experience in the financing of privately owned public utilities, have you?

A. No, sir.

Q. First, under the head of overheads, as to engineering, I note you have cut the actual expenditure of \$390,076.11 to \$304,320. I think that appears on page 27 of your report.

A. Yes.

Q. I believe you also testified very graciously that the Carquinez Bridge was designed and constructed by engineers of national reputation and that they were good engineers; that is the fact, is it not?

A. Correct.

Q. Do you believe those engineers expended any money unnecessarily?

A. I think the difference, again, mainly was accounted for by the different assumptions which were made in my estimates of the cost; in other words, that the bridge, under the assumptions I have made, could be constructed in two and a half years, which was considerably shorter, and the proportion of engineering, you will note, is approximately the same, the actual, and in my estimated cost.

Q. Then it is simply a case of pitting your assumptions against the actualities, is it?

A. That is true.

Q. Are you personally familiar with the work that the engineers had to do in this case?

A. No, I am not.

Q. I suppose that you would not undertake, then, to state that \$390,076 was not a proper amount to be spent for those engineering services?

A. Over the period of time which it actually took to construct the bridge.

Q. Now, let us turn to the fascinating subject of interest during construction. You will find that referred to, I think, first on page 24 of your report. As a matter of fact, in [fol. 511] your original computations in this case you allow only \$313,000 odd for interest during construction, do you not?

A. Yes.

Q. Then you found that that computation was very erroneous, did you not?

A. That is correct.

Q. I imagine that the trouble was that, while you had assumed the entire amount of money was available from the beginning from the sale of bonds, which you assumed to be not earlier than November, 1924, you charged in this original computation interest only on the amounts which are actually expended from time to time, but at the same time credited interest at 3 per cent on the entire unexpended balance; that was the trouble, wasn't it, with that computation?

A. Something similar to that, yes.

Q. In any event, the computation was wrong to the extent of about \$797,000, wasn't it?

A. Well, there were two things included there; that is, there was some confusion about allowing the cost of selling stock which, of course, if you are going to assume it was all financed by a bond issue, would not be included.

Q. As a matter of fact, as far as the interest during construction is concerned, you assumed, did you not, that the money would be secured entirely from the sale of bonds, sold at the very beginning of the project?

A. That is correct.

Q. And this question of commissions on the sale of the stock does not enter into interest during construction; it appears under the heading of preliminary expenses, doesn't it?

A. It did; but on the assumptions I am making in this report it would not be a logical item to include.

[fol. 512] Q. The question there is whether or not it should be allowed under the head of preliminary expenses.

A. Yes.

Q. It is not a question of interest during construction, is it?

A. No, but I just simply wanted to point out that the two are inter-related and that was one cause for confusion in the original figure.

Q. In any event, you have now increased the amount which you would allow for interest during construction from \$313,563 to \$1,103,634, is that correct?

A. That is correct.

Q. Well, addressing ourselves then to your last item, you have assumed there, have you not, an 8 per cent cost of money ~~from~~ bonds?

A. Yes.

Q. I assume you are aware, Mr. Mitchell, that Mr. Coleman in his report, which is Railroad Commission's Exhibit No. 1, at page 17 reported that the actual cost of bond money alone to the Company was 9.42 per cent, considering discount and expense items, and 8.6 per cent if the capital stock which it was necessary to issue in connection with the sale of the bonds be disregarded?

A. Yes, I was aware of that.

Q. In other words, the lower of these two figures is 8.6 per cent. Then it is a fact, is it not, that the interest rate which you have assumed here is less than the actual cost of the bond money alone to the Company?

A. That is correct.

Q. How would you justify an estimate here which assumes an interest rate substantially less than that which the Company actually had to pay on the bond money, which in amount was substantially less than what you here assume?

[fol. 513] A. I took that rate on the advice of the Commission's engineer, Commission's staff, that that was practically as large an interest rate as they had allowed in any rate case.

Q. Well, did they advise you that they had had under consideration any case which involved the hazards of this particular project?

A. No, they did not.

Q. Then I take it this 8 per cent is not a figure on which you yourself have passed but simply a figure that you took because it was suggested to you as proper?

A. That is correct.

Q. You do not now desire from the witness stand, Mr. Mitchell, to take the position that that is a proper figure, do you?

A. No.

Q. Mr. Mitchell, is it your judgment that an enterprise of this character, constructed under the circumstances and conditions which governed at the time when it was conceived, a private utility enterprise with all of its hazards, could, as a matter of fact, have been constructed exclusively from the sale of bonds?

A. Probably not.

Q. As a matter of fact, Mr. Mitchell, you have never heard, have you, of an enterprise of this type constructed by a concern which had no assets and had no credit, being financed exclusively from the sale of bonds?

A. No, that question has not been even considered in my report here.

Q. In other words, in that respect also your assumption is quite different from the actual facts, is it not?

A. Yes.

Q. Do you know whether the Railroad Commission would allow a concern of this size to be constructed exclusively from the sale of bonds and without any money having been [fol. 514] put in before from stock sales or from other sources?

A. Probably not, a company of the character that built the bridge. And my assumptions were made on the premise that there were ample funds available to construct the bridge and to let it to contract immediately.

Q. That is, ample funds would be secured exclusively by the sale of bonds?

A. Would be issued by some private company already established.

Q. Oh, already established? And there again your assumption is contrary to the fact.

A. I agree.

Q. As a matter of fact, Mr. Mitchell, this bridge was built by a concern which was not already established?

A. Yes, there is no argument about that.

Q. You didn't suppose, for instance, did you, Mr. Mitchell, that the Pacific Gas and Electric Company would build that toll bridge up there?

A. I don't know of any reason why they should, but a company so established might.

Q. Then to the extent to which, as a matter of practical common sense and practical actual facts it would be necessary in a case of this kind to secure part of the money from the sale of stock, it was necessary to incur expense?

A. I have not attempted to argue with the fact that the work may have been started on a shoe string and, in fact, I have pointed out one of the differences in the cost as shown by my figures. And that cost was due to the fact that it was started out without sufficient finances and had to work from hand to mouth for a while, and the resulting delays would naturally cause extra expenses.

Q. The difficulty was that, instead of this being a Utopia, it was the actual construction under actual conditions, [fol. 515] wasn't it?

A. My report does not deal with what you might say you would call the actual history at all.

Q. And if in connection with an enterprise of this kind it would have been necessary to secure some of the funds from the sale of stock, of course, an allowance of expenses in connection with such sale would have to be included in preliminary expenses?

A. That is correct; and your interest on borrowed money would be reduced.

Q. And if it were necessary in an enterprise of this character to raise, say, \$1,000,000 from stock and other sources before you could get anybody to buy the bonds, would you consider that the stock sales expense of \$148,000 would necessarily be unreasonable?

A. I understand that was a 20 per cent discount received by the salesman, which I understand was approved by the Corporation Commissioner.

Q. Yes, approved by the Commissioner of Corporations of the State of California. Well, suppose we pass on to something else. Just one further point, Mr. Mitchell, as to the preliminary expense item: Apart from the stock sales expense, I understand that you allowed 2½ per cent of the construction costs for preliminary expenses; that is correct, isn't it?

A. Yes.



Q. As I understand it also, you based that allowance primarily on a decision of the Railroad Commission, Decision No. 8511, 19 C. R. C., page 242?

A. That is correct.

Q. Which was a decision relating to the Golden Gate Ferry Company?

A. That is correct.

Q. In your judgment, are the circumstances surrounding the running of ferries across the San Francisco Bay at all comparable, from the point of view of preliminary expense, [fol. 516] to the construction of a toll bridge, under all of its hazards, in the Carquinez Straits?

A. No; the conditions would be different.

Q. Would be quite different, would they not? And isn't it entirely reasonable to conclude that the preliminary expenses in connection with the project at the Carquinez bridge, would necessarily be considerably heavier than in connection with the running of some ferries across the Bay there?

A. Well, that might be; I am not prepared to state just exactly the circumstances in both cases, but that, I take it, was what the Commission considered, a normal and rather high allowance for this item.

Q. Just on the general subject of overheads, before we leave that, I understand that you do not question the amount shown on the books of the Company as having been expended for overhead was actually expended?

A. I didn't even go into the subject; Mr. Coleman's report shows those figures and I have taken them at their face value, have not questioned whether they were proper or not.

Q. For all you know, they were reasonably expended and necessarily expended?

A. As I say, that is all I can say, they are shown on the books and I have taken them that way.

Mr. Thelen: Mr. Mitchell, I would like to ask you a few questions now about your Exhibit 16, if you will kindly turn to that. As I understand it, in that Exhibit 16 you first submit an estimate of cost of reproduction new of the Carquinez bridge.

A. Yes.

Q. And that is a matter to which I first wish to address myself rather briefly. Referring first to the subject of [fol. 517] quantities, I assume you have used the same quan-

ties in this estimate which you used in your estimate which is in Exhibit 3?

A. It was my intention, yes, to use the same quantities.

Q. I understand also that any items which might have been omitted in Exhibit 3, such as the temporary fender system, the lighting system and so on, and all other omitted items, would also be omitted in the reproduction cost new study?

A. Yes.

Q. I take it your testimony as to the items which were included in general charges in your Exhibit 3 would also apply to the estimate which appears in Exhibit 16?

A. Yes, it was made up on exactly the same basis as the previous estimate with merely the change in prices from that time until now.

Q. That is, the change in cost of labor and materials in 1936 and 1937 as contrasted with 1925, 1926, 1927 and so on?

A. Yes, and the conditions around this part of the country in addition to the cost of labor and material.

Commissioner Riley: Pardon me, wouldn't that also include the difference in the cost of money?

A. Yes, that is correct.

Mr. Thelen: Yes, I am going into that question of the cost of money a little later because it is a matter of considerable importance, Mr. Commissioner. I understand you have here also assumed that 100 per cent of the cost would be secured from the sale of bonds which would have been sold prior to the commencement of work?

A. That is correct.

Q. And that this money, as I understand it, under the theory which underlies this second estimate, would have [fol. 518] been available on January 1, 1935.

A. Yes.

Q. And only in connection with this second estimate did you assume that the franchise from the Board of Supervisors of Contra Costa County would have been secured?

A. I didn't go into that matter at all; I just, you might say, transferred everything bodily from the first estimate, only moved it off, moved it up a period of years.

Q. Did you make any assumption as to when the first permit from the War Department would have been secured?

A. No.

Q. Did you assume there would be no difficulties or obstacles amounting to anything?

A. Yes.

Q. So we are to be again transported happily into the realm of unrealities?

A. I don't believe so. I believe under the circumstances—I mean under the assumptions I have made in making this estimate, that the amounts are ample and the time ample to construct the bridge.

Q. But you have assumed no difficulties, you have assumed no obstacles and you have assumed all the money could be secured at the outset from the sale of bonds, is that right?

A. That doesn't mean no obstacles, but I have made that assumption, that the money could be secured from the sale of bonds.

Q. You did make that assumption?

A. I did make that assumption. That doesn't mean there were no obstacles.

Q. You naturally assumed private financing and not State financing?

A. I did, yes.

Q. Now, if you will please turn to page 1 of your report with reference to the subject of wages, will you please tell me—well, in the first place, it is a well known fact, is it [fol. 519] not, that the wages for the type of labor which would be involved in the construction of this bridge are substantially higher now, and have been in 1936 and 1937, than was the fact in the 20's?

A. Yes.

Q. I would be very much obliged if you would tell me what in general that increase in wages from that time to 1936 and 1937 has been. If you have it in terms of percentages for different types of labor I would be glad to get it.

A. Well, the structural iron workers, for example, the rate per hour in 1924 was about \$1.12 according to the Engineering News Record, at San Francisco, and in 1936 and 1937 it is about from \$1.37 to recently \$1.50.

Q. Have you the corresponding figures as to any of the other types of labor in connection with the construction of the bridge?

A. No, I have not here.

Q. Then might I just ask you this question, Mr. Mitchell, as to whether the increase to which you have testified, referring to wages of structural iron workers, may be regarded as typical of the increase in the wages of the other types of artisans employed on that job?

A. I think they are roughly typical, yes.

Q. How much do the figures which you used include for Social Security taxes?

A. We haven't put that down as a separate item. We have allowed an increase in the general charges on account of that, but as stated in the report, we have also reduced the charges due to the fact that the equipment is available and the methods of handling the work are more certain now than they were at the time the bridge was built.

Q. Mr. Mitchell, Social Security tax is not figured on [fol. 520] equipment; it is figured on actual wages paid, is it not?

A. It is a general charge, yes.

Q. You say you have included it in general charges?

A. Yes.

Q. And how much have you included in general charges?

A. I couldn't give you that figure; I haven't the breakdown.

Q. Of course, there wasn't any such tax in the 20's, was there?

A. No. That is an additional figure, I will admit; but we have taken those into consideration and I believe our resulting unit prices are high enough to include all this.

Q. It is a fact, is it not, that in 1936 and 1937 the amounts which were required for compensation insurance were in excess of what they were in the early 20's?

A. Yes.

Q. And that is true also as to the public liability insurance rate?

A. Yes, they have changed.

Q. I understand from page 1 of the report that the cost of materials has also gone up, 1936-1937 as contrasted with the 20's?

A. Yes.

Q. Have you the cost of timber piling in 1924, '25 and '26 as contrasted with 1936-37?

A. No, I don't have that.

Q. Isn't it fair in general to say that, as far as wages and materials are concerned, the costs of wages and of most materials was higher in 1936-37 than it was when the Carquinez Bridge was actually constructed?

A. Yes, I have stated that in the report.

Q. You didn't have prices from any other job comparable to this Carquinez Bridge job, did you?

A. Not exactly comparable, no; but I believe, as far as [fol. 521] the relative costs over a period of years is concerned, that they should be considered comparable.

Q. Well, as I understand it, you were not checking over relative costs over a series of years; what you were doing was that you were making an estimate of the reconstruction of this bridge in 1936-37, just those 2 years?

A. Yes, but I mean as compared with prices received back in 1924 and 1925.

Q. Now, if you please turn to page 7 I would like to ask you one or two questions concerning items on that page; You estimate there, do you not, as of 1936-1937, an item of \$40,000 in connection with riprap for Piers 2 and 3?

A. Yes.

Q. That is the same figure that you used in connection with your earlier estimate, merely rounding off \$39,000 odd to \$40,000?

A. Yes, that was the intention, to use the same figure.

Q. Hasn't there been a substantial increase in wages in connection with the placing of riprap, 1936-1937 as compared to 1924-25?

A. There should have been.

Q. Don't you think, as a matter of fact, that that same riprap would cost more placed in 1936 and 1937 than it actually cost in, we will say, 1924, '25 or 1926, along in there?

A. Well, of course, it might or might not, according to the availability of equipment and the local conditions, and it is relatively small, the change that would make.

Q. I take it you did not secure any actual bids on that riprap?

A. No.

Q. On page 8, in connection with rock fill, you used a price of \$1.20, did you not, per ton?

A. Yes.

Q. That is the same figure that you used in your earlier [fol. 522] estimate, is it not?

A. Yes, and the story was just the same as on the other riprap.

Q. No allowance in either for increased cost of wages in the meantime?

A. No, assuming that would be probably counterbalanced with better facilities for handling.



Q. Do you know of any riprap which was actually placed in 1936 or 1937 anywhere in the State of California under conditions comparable to those here, at as low a rate as \$1.20 per ton?

A. No, I can't state any at this time.

Q. Isn't it a fact that for placing such riprap in 1936 and 1937, under conditions which obtained at the Carquinez Bridge, the price of \$1.65 per ton would be far more proper than \$1.20?

A. I don't know that, no. I have stated that, of course, some of these prices can only be averages, approximately correct—might be slightly low on some things or slightly high on others, but I believe the total is ample.

Q. Now, on page 7, if I may turn back just a minute, I find the last item there, exploration of foundations, \$45,000. That is substantially the same figure as you used in your Exhibit 3, is it not?

A. Yes.

Q. And there again there is no allowance for increased cost of labor?

A. No.

Q. Now, a little while ago Commissioner Riley referred to the very interesting and important subject of interest during construction and cost of money, and I would like to go into that in connection with this estimate. As I take it, in connection with interest during construction, Mr. Mitchell, you have assumed again that this project would be financed exclusively from the sale of bonds at the outset?

A. Yes.

[fol. 523] Q. And I understand also you have assumed that the project would be built by some going concern, such as the Southern Pacific Company, for instance?

A. Yes.

Q. And I take it you know of no particular reason why the Southern Pacific Company should have built this bridge in order to help automobiles compete with it, either in 1925 or in 1937?

A. No, I merely submit that as to the type of concern that I pictured.

Q. Now, as I understand it, in this estimate you assumed a cost of money of 5.5 per cent in connection with the sale of the bonds; that is correct, is it not?

A. Yes.

Q. And as I understand it, you assumed \$6,400,000 of bonds would be sold by a new concern, without either property or credit and with only 10 years of franchise to go, and you base your assumption on the fact that they could secure that money at 5.5 per cent?

A. Yes.

Q. As a matter of fact, Mr. Mitchell, the American Toll Bridge Company, at that time a going concern, had some experience in connection with refunding the bonds in 1935, did it not?

A. Yes.

Q. At that time the Company issued \$4,300,000 of new bonds in connection with calling in the old bonds?

A. Yes.

Q. Do you know what the actual cost of money in connection with that refinancing was?

A. Not unless Mr. Coleman's report shows it. I don't remember it at this time.

Q. Have you available his report and can you look at page 18? On page 18 of Mr. Coleman's report it appears that the cost of money in connection with that refinancing was 6.18 per cent.

A. Yes.

[fol. 524] Q. That was in connection with a bond issue of only \$4,300,000.

A. That is correct.

Q. Do you think it reasonable to assume that, in connection with a larger bond issue, namely, \$6,400,000, that the Company could have got the money for substantially less than it actually was required to pay in connection with this 1935 refinancing?

A. Yes, if it is assumed that they had the full period of time over which to amortize the project. Of course, that is a question I have not passed on here. I assumed that that would be the case, that you would assume they could start off fresh and have the 23 years.

Q. In both cases, as of 1936 and 1937, there were only 10 or 11 years of franchise left?

A. Yes; and that, of course, would react against the sale of the bonds at a lower rate of interest.

Q. As a matter of fact, Mr. Mitchell, with a concern which unfortunately has only 10 or 11 years left of franchise life, do you think it possible for that concern, in rebuilding this

bridge in 1936-37, to have gotten bond money for as low as 5.5 per cent?

A. Not with that short period; but I am assuming here they would have a longer period on this reproduction as of this date. I am assuming the franchise life would continue for 21 years. Whether that is correct or not I am not prepared to argue.

Q. This is an estimate to reconstruct the bridge from January 1, 1935, to November, 1936, isn't it?

A. Yes.

Q. This particular bridge, with its franchise life only extending 10 or 11 years more?

A. Well, if that was the case, I don't think anybody would ever build the bridge.

[fol. 525] Q. Now, you have assumed that this money which you would secure from the sale of bonds would be put in savings banks, in so far as it was necessary from time to time for the construction?

A. Yes.

Q. Page 16 of your report?

A. Yes.

Q. You have assumed that you could get 2 per cent on that money?

A. Yes, for 6 months' periods.

Q. This was put into savings account?

A. Yes.

Q. Don't you know, as a matter of fact, that under the rules of the Federal Reserve system the corporation could not have put any money in savings accounts in 1936 and 1937?

A. No, I don't know that. I was advised by the accounts that this was reasonable.

Q. Well, I am going to protect the accounts, because there is a mistake there somewhere. You were not advised that, under the regulations of the Federal Reserve System, there is only one type of corporation which could have made a deposit in savings banks in these years, namely, a corporation engaged in work of a religious, philanthropic, charitable, educational, fraternal or similar organization, and not operated for profit?

A. No, I was not advised.

Q. And if the corporation could not have made a savings bank deposit, which is obvious under the rules and regulations, how would you have gotten this 2 per cent interest?

Q. I don't know any way you could, of course, get it besides short term loans in general, if they are permissible, and I believe for these months which we have assumed it would be possible to collect a certain amount of interest on short term loans. We have not assumed any interest on less than 6 months.

[fol. 526] Q. Are you acquainted with the fact that the only way that situation could have been handled by making deposits in banks would have been to make a short time loan at the rate of interest at that time of approximately one-half of one per cent?

A. No, if that is the only way, I didn't know it.

Q. Of course, if that was the fact, the result would have been a substantial change in your allowance for interest during construction?

A. Certainly, if that was the fact.

Q. Now, Mr. Mitchell, a while ago you referred to the question of whether anyone with ordinary common sense would reconstruct this bridge under existing conditions; and as I understand it, you have expressed the view that, with only 12 years of franchise left as of January 1, 1936, people of good sense simply would not reconstruct that bridge in 1936-37, isn't that true?

A. That is the way it impresses me, yes.

Q. Then any estimate of cost of reproduction as of 1936-1937 is—well, it is purely hypothetical, isn't it?

A. Yes, the cost of reproduction is hypothetical.

Q. And not in accordance with the facts of life as the relations of people with ordinary horse sense are conducted?

A. I have not attempted to go into what weight should be given any of these estimates, of course.

Q. In your opinion, Mr. Mitchell, would the estimated cost of reproducing either this bridge or the Antioch Bridge in 1936 or 1937 have any value at all in this case?

A. I would hate to say that. I can just merely state from that angle here, as I stated there, that I don't see [fol. 527] how it would apply. I am not in position to state whether it has any value or not.

Q. The reason why it would not apply would be simply that people with horse sense would not reconstruct either of those bridges in 1936 or 1937 with only 10 years franchise to go.

A. No, I don't believe they would.

Mr. Thelen: Mr. Mitchell, I have only a relatively few additional questions and they will be directed to your exhibit 17, which is the exhibit that deals with the Antioch Bridge. As I understand it, in Exhibit 17 you have prepared two estimates in connection with the Antioch Bridge, the one being the estimated reasonable original cost and the second being an estimate or reproduction cost new as of 1936-1937?

A. Yes.

Q. Now, have you any reason to doubt that the moneys which are shown on the books of the Company as having been expended in connection with the Antioch Bridge were actually expended?

A. No, I haven't questioned that.

Q. And I suppose you do not question the fact of those moneys having been reasonably and necessarily expended?

A. I just haven't taken it into consideration in this report.

Q. Now, as I take it, the general assumptions with reference to the methods of construction which you followed as to the Antioch Bridge are in general the same as those which you followed in connection with the Carquinez?

A. Yes.

Q. I assume that the cost of material and wages which you used in connection with the Carquinez Bridge, both as to the original construction and as to the later reproduction [fol. 528] cost new, are also used by you in connection with the Antioch Bridge?

A. Yes, they have been considered in the same light.

Q. I believe here also you have assumed that all the money for the construction of the bridge would be secured from the sale of bonds exclusively and that that money would all be available from the beginning of the construction?

A. That is right.

Q. And with reference to your assumed cost for reproduction new, I assume you have again assumed that you could secure the bond money at a cost of only 5.5 per cent?

A. Yes.

Q. And you have assumed also that you could place such of those moneys as you did not need from time to time on deposit in savings banks for 6 months' periods at 2 per cent interest?

A. Yes, sir.



Q. Now, as to certain overhead expenses, such as engineering expense, general expense and preliminary expense, I assume you have used the same percentages of construction cost as you also used in connection with the Carquinez Bridge?

A. Yes, sir.

Q. Now, by these various assumptions and estimates you assume, do you not, that you could have built the Antioch Bridge for approximately \$400,000 less than it actually cost the American Toll Bridge Company?

A. Yes.

Q. And I assume, Mr. Mitchell, of course, you have never constructed yourself a bridge like the Antioch Bridge, have you?

A. Not like it, but certainly bridges that have the same features in them that the Antioch Bridge has.

Q. Now, as to reproducing that bridge new as of 1936 or 1937, with only 11 or 12 years of franchise to go, do you [fol. 529] believe that anyone with reasonable judgment and common sense would have reconstructed that bridge in 1936 or 1937?

A. No, if you assume that you have to get back the entire cost of the bridge within that period of time—and that is the basis on which your assumption is made—if you assume you have already so much out of it in proportion to its time, why, that would be something different.

Q. Do you know whether the Antioch Bridge has been operating at a profit or a loss?

A. I think the other exhibits will make that quite plain here. I would not presume to state how much it has earned at this time.

Q. Don't you know, as a matter of fact, Mr. Mitchell, that that bridge has been operating at a loss?

A. I know it has lost—it is, at least, not comparable to the Carquinez Bridge in income.

Q. Now, on page 5 of your Exhibit 17 near the bottom I find this comment, "It is doubtful if revenue bonds based on this structure alone and bearing any reasonable rate of interest could be sold today." Just what do you mean by that statement?

A. That the potential earnings probably would not be attractive, of course, to anybody at this date in financing such a structure.

Q. That would be true, would it not, also of an authority which issues what we call revenue bonds?

A. Yes, I doubt if it would be done.

Q. Well then, I assume it is your judgment in the present proceeding that the estimated cost of reconstructing the Antioch Bridge in 1936 or 1937 would have no more value than a similar estimate as to the Carquinez Bridge?

A. No more value, no.

[fol. 530] Mr. Thelen: I think that is all.

### Redirect examination:

Mr. Rowell: I have a few questions particularly pertaining to your last table contained in Exhibit No. 16 and particularly with reference to the first column of figures, the book accounts allocated to the construction. You have them before you?

A. Yes.

Q. Will you explain from what source you obtained that first figure of \$5,816,000 under the head of "Total construction cost"?

A. In Mr. Coleman's report, which I believe is Exhibit 1, on page 7 under the heading "Carquinez Bridge cost" he shows items of payments to contractors, fender system and various other items down to, but not including, organization expense, and the figure of \$5,816,556 is the sum of those items.

Q. It is the sum of the first eight items extended in Mr. Coleman's Exhibit No. 1 on page 7, is that correct?

A. That is correct.

Q. Then the next item, the ninth item, in Mr. Coleman's exhibit, \$476,707.70, also appears in your Exhibit 16 on page 19, does it not, under head of preliminary expense?

A. Yes.

Q. Now, going back to the item of construction engineering, where is that found?

A. Following organization expense in Mr. Coleman's report he shows engineering, overhead equipment and various other engineering expenses totaling \$390,076.11, which I have used opposite the term "Construction engineering" in my report.

[fol. 531] Q. And the next item of general expenses, Mr. Mitchell, \$492,018.27, does that also appear in Mr. Coleman's Exhibit No. 1?

A. Not exactly those figures. However, he shows under general overhead various items which include interest and amortization amounting to \$688,092.56, which I have shown opposite interest during construction in my report. Subtracting this figure from his total for that item of \$1,180,110.83, you arrive at the \$492,018.27 which I have shown as general expenses.

Q. Therefore, as I take it, your total on page 19 representing the book costs under those six different accounts is exactly the same as those shown in Mr. Coleman's Exhibit No. 1 on page 7 where he has itemized them under 20 or more different accounts?

A. That is correct.

Q. Now, have you or can you compute for us the relation in per cent of the five items contained in column 1 on page 19 of your exhibit to the first construction cost item of \$5,816,556? In other words, treating all of these subsequent items as indirect or overhead charges, what percentage relationship would that be to the physical property?

A. It would be 35.2 per cent of the total construction cost, that is, the sum of those overhead charges would be 35.2 per cent of the first figure shown as total construction cost.

Q. So the Company's books show that, in addition to the cost of the physical structure, there were indirect charges in addition of about 35.2 per cent, isn't that right?

A. That is correct.

Q. Referring now to your second column on page 19, the [fol. 532] check analysis of the first cost, will you give us the relation in per cent of the indirect or overhead items there contained in relation to the construction cost of the physical property?

A. The total of all the overhead items, from which you will note here should be excluded the value of land and equipment, is in this case about 34.6 per cent of the items shown as total construction cost.

Q. So, excluding land, you have allowed in your analysis of first cost 34.61 per cent for overhead and other indirect charges, have you not?

A. That is correct.

Q. As compared to the book percentage for overheads of 35.2 per cent?

A. Yes, that is correct.

Mr. Rowell: That is all I have.

Mr. Thelen: Nothing further.

Mr. Thelen: Call Mr. Coleman.

F. COLEMAN, recalled.

Cross-examination:

Mr. Thelen: Mr. Coleman, you have been with the Commission's Department of Finance and Accounts for quite a long time, haven't you?

A. Yes, sir.

Q. And you have there received your training under Mr. W. C. Fankhauser, haven't you?

A. Yes, sir.

Q. Now, I would like to ask you this question, Mr. Coleman: Suppose that a new enterprise, without assets and without credit, should come to the Railroad Commission for authority to finance, is it the Commission's policy to permit such concern to secure all of its funds from the sale of bonds alone, without part of the funds being secured from [fol. 533] the sale of stock or other sources?

A. In general the answer to that is no, unless there were turned over to the corporation other properties, such as lands, which would boost the equity back of the bonds up to a figure in excess of the bonds.

Q. I was assuming a case in which the corporation which came to the Commission had neither assets nor credit. In that case I take it the Commission never permits any such concern to finance itself exclusively from the sale of bonds, does it?

A. I don't know of any cases when it did.

Q. And that goes back over an experience of at least 15 years with the Commission?

A. That is right.

Q. Can you state, Mr. Coleman, as to what the Commission's general requirements in finance cases during the last 15 years have been with reference to the sources from which a corporation may secure its funds for capital expenditures, assuming that this corporation to which we are addressing ourselves is a new corporation which has neither assets nor credit?

A. Well, there have been cases where the Commission at the outset has required a corporation to secure its funds through the issue of stock. As to the ultimate financing, in general it has been the Commission's policy to limit bond issues up to approximately 60 per cent of the construction cost.

Q. And it has been the general policy to require such concern to secure other funds, the remaining 40 per cent, from the sale of stock or some other sources?

A. In general, that is correct.

Q. Isn't it true also in general that the Commission has required that at least a substantial amount of those other funds be on hand before the utility is permitted to issue its [fol. 534] bonds?

A. Yes, sir, that is correct. I might go a little further than that and say that in many cases with a new enterprise the Commission has required proceeds from stock to be im-  
bounded and to be released only upon supplemental order of the Commission, until sufficient funds were on hand to insure the starting of the project.

Q. Those precautions are taken, are they not, to prevent people from innocently investing in securities and then finding everything goes to smash because the concern has not been properly financed?

A. That is correct.

Q. Now, in your opinion, Mr. Coleman, could the American Toll Bridge Company, a new enterprise without assets or credit, have undertaken the hazardous construction of a toll bridge across the Carquinez Straits and have been able to finance itself, in the years 1923, 1924 and 1925, exclusively from the sale of bonds?

A. No, sir, I don't believe it could.

Q. Assuming that I would ask you the same question, Mr. Coleman, as to the construction in the years 1936 and 1937, assume your answer would be the same?

A. Well, of course, you also have to take into consideration this Commission's jurisdiction there—whether or not the Commission would permit that if the Company could sell bonds up to 100 per cent.

Q. Yes, I am assuming the case in which the particular utility was clearly subject to the jurisdiction of the Commission.



A. I would question whether the Commission would authorize the capitalization up to 100 per cent with the issue of bonds.

Q. I imagine your answers would be the same if I had [fol. 535] asked the same question both as to the 20's and as to 1936 and 1937, substituting merely the word "Antioch" for "Carquinez" Bridge?

A. Yes, I would say no difference.

Q. Now, I would like to ask this question, as to whether, in your judgment, this concern, if it were a new company without assets and without credit, seeking to construct the Carquinez Bridge in the years 1936 and 1937, issuing \$6,400,000 of bonds for that purpose, could possibly have secured its money at the low cost of 5.5 per cent?

A. In what year?

Q. 1936 and 1937.

A. Probably not privately, unless they could get it from some Government agency.

Q. Yes, if it stood on its own feet as a public utility, it would be impossible, would it not?

A. It would be improbable.

Q. That improbability is shown by its actual history in connection with this refinancing in 1935, is it not?

A. Yes.

Q. Now, if you will kindly look at page 1 of your Exhibit 1, you report there, do you not, that the American Toll Bridge Company was organized to build two toll bridges, one across the Carquinez Straits and the other at Antioch?

A. Yes, sir.

Q. And it is a fact, is it not, that the books of the Company show expenditures in connection with construction and operation of both these bridges?

A. Yes, sir.

Q. There are no separate books kept for the Carquinez Bridge as distinguished from the Antioch Bridge, or vice versa?

A. No, sir, there is one set of books with, however, different ledger accounts for each bridge.

[fol. 536] Q. And as you say on page 2, it is a fact, is it not, that during all the time the construction work was going on on the Antioch Bridge, construction work was also going on on the Carquinez Bridge?

A. Well, the construction work on the Carquinez Bridge started prior to the time construction work did on the An-

tiach, but the Antioch was completed before the Carquinez Bridge.

Q. During all the time they were building the Antioch Bridge they were also working on the Carquinez Bridge?

A. That is right.

Q. On pages 5 and 6 of your exhibit you show, do you not, the assets and liabilities of the American Toll Bridge Company as of August 31, 1937, as found by you on the books?

A. That is the balance sheet that I derived from a trial balance of the Company accounts.

Q. You show a total of assets of some \$13,390,000, do you not?

A. Yes, sir.

Q. Without going into the details, Mr. Coleman, it is a fact, is it not, that many of the items of liabilities and also certain of the items of assets are applicable to both the Antioch and the Carquinez Bridges?

A. That is right.

Q. Take, for instance, the very first item under liabilities, that of capital stock, that is the capital stock of the entire corporation, isn't it?

A. Yes, sir.

Q. And then the next item of bonds, they are bonds issued by the corporation as against both bridges, are they not?

A. Yes, sir.

Q. And without going through the details, it is a fact, is it not, that if you are going to try to find what assets or what [fol. 537] liabilities are applicable to one or the other of these bridges it is necessary in many cases to make what you call segregations on certain bases?

A. Or apportionments.

Q. Yes, apportionments, I should have said.

A. This is the balance sheet of the entire corporation.

Q. Now, on page 7 you show the investment in the Carquinez Bridge, do you not, as you found it on the books?

A. Yes, sir, being a detail of the columns—

Q. The total figure being \$7,863,451.17?

A. Yes, sir. In that total I have added the \$300 item that I explain in the second paragraph on the page.

Q. Have you any doubt that that money was actually expended by the Company?

A. These are the recorded charges according to the Company's books.

Q. Have you any reason to believe that there was any inaccuracy in connection with the recording of those charges, or that expenditures were shown which weren't actually incurred?

A. I have no reason to believe that, no, sir.

Q. Now, on page 16 I find, Mr. Coleman, that you have set forth near the top of the page, in connection with stock financing, an item of \$800,000 representing stock issued to the purchasers of the bonds?

A. Yes, sir, that stock was issued to the underwriters of the bonds, who were the purchasers, of course.

Q. As I understand it, it was 500,000 shares shown on the books at \$1.60, making a total of \$800,000?

A. That is correct.

[fol. 538] Q. I imagine that while you were examining the Company's records you found the contract, did you not, which provided for the issue of that stock?

A. Yes, sir.

Q. And you haven't any doubt, Mr. Coleman, have you, that the stock was actually issued?

A. No, I have no doubt.

Q. And I suppose you are expressing no opinion as to whether it was necessarily issued or not?

A. Well, there seemed to be a necessity, as I gathered; the underwriters wouldn't take the bonds unless they were also given that stock.

Q. Will you please turn to page 22 of your report, Mr. Coleman. You show there, among other matters, the moneys which have been paid out during the life of the corporation in the shape of dividends, do you not?

A. Yes, sir.

Q. You show, do you not, certain relatively small payments in 1924 and 1925 and then nothing further until 1936?

A. Yes, sir, that is what the record shows.

Q. So that the books show that during the years 1926 to 1935, inclusive, being 10 years, the Company paid no dividends whatever?

A. That is correct.

Q. Then in 1936 they paid a dividend of 8 cents a share. I take it?

A. 8 per cent—8 cents a share.

Q. That is, 8 per cent on the par, of course. And then in 1937 they paid 13 cents, did they not?

A. This figure on page 22 is up to August 31st only. Since that time an additional dividend has been paid.

Q. Making a total of 13 cents?

A. I understand 13 cents has been paid this year.

Q. On page 23 you show, do you not, the income account from January 1, 1926, to August 31, 1937. That is for the Company as a whole, is it not?

[fol. 539] A. Yes, sir. You will observe it breaks down the revenue and expense to the two bridges.

Q. And, of course, as far as revenues are concerned, it is very easy to report those actual facts for each bridge, is it not?

A. Yes.

Q. And as to expenses, I imagine that is true as to certain expenses but would not be true as to overheads and kindred expenses?

A. That is correct, some of the expenses are apportioned between the two bridges.

Q. As to the Antioch Bridge, Mr. Coleman, I would be obliged if you would look at the item which reads "Net operating revenue". It is true, is it not, that during the years 1926, 1927, 1928, 1933, 1934, 1935 and 1937 to August 31st, that bridge operated in the red?

A. Yes, sir. Depreciation, however, is included in the operating expenses before arriving at this net loss.

Q. Well, I assume it is necessary to include items for depreciation, is it not?

A. Oh, yes; but the only point is that that was not necessarily a cash expenditure.

Q. You have made a very careful analysis of the cost of money, Mr. Coleman, and I would like to ask you a few questions on that subject beginning with page 17. As I understand it, on page 17 you refer to the original bond issues as distinguished from the refinancing in 1935?

A. Yes, sir.

Q. Now, am I correct in assuming that you have ascertained that, as far as the original bond issues were concerned, the cost of the bond money on the straight line basis was 9.42 per cent?

A. That is the figure I obtained, if my arithmetic is correct.

[fol. 540] Q. I certainly would not challenge your arithmetic, Mr. Coleman, so we will assume that is correct. And

if we include also certain items totaling \$116,639 which might properly be considered as bond expense, the cost of money would be raised a little, to .971 per cent on the straight line basis?

A. Yes, sir. That includes, of course, the amortization of the bonus stock.

Q. Do you happen to have any figure showing what those percentages would be on the sinking fund basis, Mr. Coleman? If you haven't them now I would not ask for them now.

A. Well, in the next paragraph I give that cost computed on the 6 per cent sinking fund basis and excluding bonus stock.

Q. That figure is 8.6 per cent?

A. Yes.

Q. Have you a similar percentage including the stock which was issued in connection with it?

A. I haven't that now. I can easily compute it.

Q. Would it be too much trouble to ask you to prepare it and some time later give it to us?

A. I will tell you right now—would be just slightly in excess of 8.6, somewhat in excess of 8.6.

Q. Now, I would like to read a question to you, Mr. Coleman, which was asked of you by Mr. Rowell, and then I would like to ask that you—want to follow it up a little bit further. I am reading from page 117 of the transcript, where Mr. Rowell asks you this question,

“Mr. Coleman, if you were to treat the investment made by the holders of bonds and the holders of stock of the American Toll Bridge Company as a wasting asset, to be returned over the remaining franchise life, would the decreased net revenue as estimated by Mr. Hunter be sufficient to so amortize the investment of the bondholders and stockholders plus, after the payment of all expenses of operation, over that period?”

You remember that question, do you not?

A. Yes, I remember that question.

Q. You also remember that you submitted certain computations, in response to that question, and those computations ultimately found their way into Exhibit 22, did they not?

A. Yes, sir.



Q. Now, when Mr. Rowell asked you that question, referring to a wasting asset, please state whether you understood that term, as applied to the facts in this case, to mean that the investment from the beginning is to be treated as a wasting asset and is to be returned with fair interest or dividends by the time the franchise expires?

A. I think that is correct. I have considered that here was an asset whose value would cause on a certain known date.

Q. And by that date, of course, it would be necessary to have the investment returned.

A. That is right.

Q. And in the meantime, those who made the investment would naturally expect to receive reasonable interest, if it were bonds, and reasonable dividends if it were stock?

A. I presume that would be the reason they would make the investment.

Commissioner Riley: Let me understand that. The question is more far-reaching than I think is appreciated. What you mean to say is that the investor of money should have had his reasonable dividends from the beginning until now?

Mr. Thelen: Why, certainly.

Commissioner Riley: And from now on?

Mr. Thelen: Why, certainly.

[fol. 542] Commissioner Riley: Is that your conception, Mr. Coleman?

A. No sir; I was looking at the question from now on.

Commissioner Riley: That is what I thought.

Mr. Thelen: That computation looks at it from that point of view, but his theory of a wasting asset begins at the beginning.

A. That would be correct if we were studying this picture from the very beginning.

Q. It would not be proper just to jump in at the middle and say, "Regardless of all the sacrifices that were made in the past, we won't pay them back to you but will simply take care of the future"; that would not be a fair proposition, would it, in the case of a wasting asset?

A. In this particular wasting asset, or in general?

Q. Any one.

A. Of course, in this particular one we had no voice in the matter until now, and that was the reason we were considering it from now on.

Q. And now, having a voice in the matter, I assume that, true to the traditions of the Commission in the past, you would want to exercise your present authority in a way that was fair and just?

A. Certainly.

Q. Now, turning to the other source of capital, namely, that which came from the issue of stock, I understand that looking from now ahead for the remaining 10 years you provide that the stock is to be amortized; that is correct?

A. Yes.

Q. And that certain dividends are to be paid from now on?

A. That is right.

Q. But making no provision to reimburse the stockholders for the sacrifices which they suffered in the past throughout the 10 years when we know that no dividends at [fol. 543] all were paid, when they got no dividends at all?

A. No provision is made for those past losses here.

Q. Have you made any computation to determine what the deficiency in dividends was throughout the past years on the assumption of an 8 per cent dividend?

A. No, sir, I haven't those figures.

Q. Would you be surprised if it amounted to as much as \$2,250,000?

A. No; I think that would be about correct.

Q. In other words, that is money which the stockholders failed to get because they were not paid an 8 per cent return?

A. That is the 10 years' dividends, yes.

Q. And, of course, if one takes the theory of a wasting asset and applies it logically from the beginning, instead of jumping into the middle of the period, those stockholders would have been taken care of as far as dividends are concerned?

A. That would be correct if you started from the beginning.

Q. This case is quite different, is it not, from the normal case of a public utility which has a franchise lasting a great many years or which is indeterminate in character?

A. Yes, sir, so far as I know, it is the first one of this kind.

Q. First one the Commission has ever had, isn't it?

A. So far as I know.

Q. In the case of the usual public utility which has an indeterminate franchise, or at least a long term franchise, if

the dividends can not be paid during the early years there is at least the hope that they can be made up later?

A. That is right.

[fol. 544] Q. Now, I have just a few more questions about this Exhibit No. 22. I would like to have you address yourself, if you will, to the item of stock outstanding, \$3,719,593.

A. Yes, sir.

Q. Now, as I understand it, you valued that stock at \$1 per share?

A. Yes, sir.

Q. And I believe you testified that you had reason to believe at least a substantial portion of the outstanding stock originally sold for \$2 per share?

A. Yes, sir.

Q. Netting the Company \$1.60 per share?

A. That is correct.

Q. It is a fact, is it not, Mr. Coleman, that as far as the stock that was sold in California to people here is concerned, that was all sold at \$2 per share?

A. So far as I know, that is correct.

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J. G. HUNTER, recalled.

Cross-examination:

Mr. Thelen: Now, Mr. Hunter, if you will kindly turn to page 5 of your Exhibit No. 19. Your figures there shown for return on investment are based, are they not, on an assumed investment of \$6,880,000?

A. That is correct.

Q. Now, that is the figure shown on Mr. Mitchell's report before cross-examination started, is it not?

A. That is correct.

Q. I take it, Mr. Hunter, that you have not yourself made an independent estimate of the reasonable original cost of constructing the Carquinez Bridge?

A. No, that was left to Mr. Mitchell.

[fol. 545] Q. And if it should develop that, as a matter of fact, the figure of \$6,880,000 is too low, that there have been omitted items and other matters which should be considered and which would raise that figure, then I take it, naturally, to that extent necessary revisions would have to be made in your exhibit?

A. That would naturally follow.

Q. In other words, that figure of \$6,380,000 is the key figure, isn't it?

A. That is the figure upon which interest return is computed.

Q. Also is it the figure on which an allowance for depreciation is computed?

A. That is correct.

Q. So that, frankly, that is a very, very important figure in the whole set-up, isn't it? I have referred to it as the key figure.

A. Well, I would say that it is that figure upon which interest is computed. It is not as important a figure in point of effectiveness as, say—is not as effective as if it were an operating cost.

Q. But there is no dispute as to operating cost; you have taken the Company's operating cost?

A. That is correct.

Q. But on this item there is a very serious dispute as to whether or not that figure is correct?

A. Well, I have heard the cross-examination.

Q. Well, to the extent to which items have been omitted, of course, it would be necessary to increase that figure?

A. Whatever it should be is the proper figure to use in that table.

Q. Well now, passing to another matter, then, Mr. Hunter, I notice on this same table near the bottom, in connection with the subject of return on investment, under Arabic 2, this statement, "Amount in excess of 6 per cent [fol. 546] return on investment". Now, you are familiar, are you not, with the actual cost of bond money as shown in Mr. Coleman's Exhibit 1?

A. Well, just generally.

Q. I take it you remember Mr. Coleman on his page 17 showed that the cost of bond money, computed on the sinking fund basis and disregarding the stock issued to the purchasers of the bonds, was 8.6 per cent? You heard that testimony, didn't you?

A. Yes.

Q. And you remember on the straight line basis that cost would be 9.71 per cent?

A. Yes, I—

Q. That would include additional items of \$116,639 of cost to which Mr. Coleman testified just a little while ago. Now, with the actual cost of money at those figures, I take

it you don't mean to advise the Commission that in this case a 6 per cent return would be adequate, do you?

A. Well, of course, in the final analysis, that is a matter for the Commission to determine. The purpose of setting it up is to give the Commission the picture on these two bases, one 6 and one 8. Now, in the ordinary utility it would seem that the Commission should seriously consider the 6 per cent return.

Q. As a matter of fact, isn't it the policy of the Commission to ascertain the cost of money and then to allow something in excess of that? Hasn't that been the policy throughout all the years?

A. I rather think so.

Q. Then in this case, Mr. Hunter, don't you think when it comes to the fixing of the actual rate, that it would be proper for the Commission to ascertain the cost of money and then make some additional allowance over that?

[fol. 547] A. Well, I should say the Commission should follow its precedent as much as it can if they have a case that is anywhere comparable.

Q. Then, as I take it, Mr. Hunter, these figures here, both as to the 6 per cent and as to the 8 per cent, are, as I believe you testified, mere calculations without an expression of opinion on your own part as to what a fair rate of return would be?

A. That is right.

Q. If you will now please turn to the table which is page 8 of your exhibit, the first item, Mr. Hunter, operating revenue. That in the year 1930 is reported by you as \$1,199,261, is that correct?

A. That is correct.

Q. Then throughout what we may call the depression years, at least up until recent difficulties, we have a substantial falling off of that operating revenue?

A. Yes, with the low in 1933.

Q. Fell down to \$1,157,892 in 1931, then fell further to \$981,813 in 1932 and still further to \$923,020 in 1933, and then gradually climbed up, being \$965,131 in 1934, and \$1,067,075 in 1935 and it was not until 1936, was it, that the Company got the revenue which it got in 1930?

A. That is right; that is the low period on the revenues.

Q. Now, that situation shows very clearly, does it not, Mr. Hunter, that the revenues of this bridge are largely



dependent upon general economic and financial conditions?

A. Yes, that follows.

Q. Now, on page 10 and also on the following pages of your report you give consideration, do you not, to the effect of the application to the Carquinez Bridge of the same tolls for automobiles and passengers which now obtain on the [fol. 548] San Francisco-Oakland Bay Bridge and the Golden Gate Bridge?

A. That is correct.

Q. Now, Mr. Hunter, as a matter of fact, from the point of view of proper tolls, there are important differences, are there not, between the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge, on the one hand, and the Carquinez Bridge on the other?

A. Important differences?

Q. Yes.

A. Well, of course, physically they are quite different.

Q. Take, first, the matter of the franchise life. The Carquinez Bridge has a franchise life of only 10 years and, therefore, the investment must be amortized in those 10 years. Now, that is not true, is it, of either the San Francisco-Oakland Bay Bridge or the Golden Gate Bridge?

A. No, that is not true.

Q. That is a very, very important consideration, is it not, as far as the fixing of rates is concerned?

A. Yes; the question of amortizing that investment within the life of the franchise is a very substantial item in the operating costs.

Q. Isn't it true also that the Carquinez Bridge, by reason of that fact, that is, that it has only a 10-year life, is at a very serious disadvantage in any comparison that may be made with the San Francisco-Oakland Bay Bridge and the Golden Gate Bridge?

A. Well, it would seem to me if the investors are fairly treated under this plan it irons out any differences that may exist between the two bridges.

Q. But it is more difficult to treat the investors fairly where there is only a 10-year life left and the capital has to be amortized in that period; that means a very much [fol. 549] higher amortization rate, does it not?

A. That is correct.

Q. Now, another factor, if I may suggest, it is a fact, is it not, that as to the cost of money the situation on the San

Francisco-Oakland Bay bridge and the Golden Gate Bridge is quite different from that of the Carquinez Bridge?

A. I am not a financial expert, but my guess is that the answer is yes.

Q. As a matter of fact, the funds secured from the Reconstruction Finance Corporation in connection with the construction of the San Francisco-Oakland Bay Bridge were secured at very much lesser rates of interest than the cost of money to the American Toll Bridge Company?

A. That is true.

Q. It is also true as to the bonds sold for the construction of the Golden Gate Bridge?

A. Yes.

Q. That matter of the cost of money, therefore, puts the Carquinez Bridge at a substantial disadvantage in comparison with the other two?

A. Yes, from that side of it.

Q. Isn't it true also that, from the point of view of density of traffic, the Carquinez Bridge is at a disadvantage in comparison with the other two?

A. Somewhat. However, I think when we relate it on a percentage basis the great differences, you might say, disappear. If you are talking of total volume, then there are materially different conditions in the two cases.

Q. Isn't it true also in the very important item of taxes that the Carquinez Bridge is at a distinct disadvantage in any comparison with the other two bridges?

A. Oh, yes, the taxes are entirely different.

Q. Don't you think, frankly, that by reason of these very [fol. 550] important differences that the Commission, in undertaking to fix the rates for the Carquinez Bridge, ought to be a little slow before they take the rate that is applicable to the other two bridges as being necessarily the proper rate to apply to the Carquinez Bridge?

A. Well, it was not my thought that, because of the fact they had a 50-cent fare for automobile and 5 passengers on both the San Francisco-Oakland Bay Bridge and the Carquinez Bridge was a reason, or the controlling reason, why they should have a 50-cent fare on the Carquinez Bridge. But in looking over the comparative rate structures of the two bridges, or the three bridges in this case, it just seemed like the fare charged automobiles and passengers on the Carquinez Bridge was more or less out of line with the other comparable fare structures of the other bridges.

Q. Of course, it was different, was it not? It was higher?

A. Much higher.

Q. But don't you believe in fixing the rates for the Carquinez Bridge that consideration should be given to the facts as they actually apply to that bridge instead of perhaps being led astray by making comparison with some other bridge as to which the circumstances are entirely different?

A. Oh, yes, I think the Carquinez Bridge should stand on its own feet regardless of what happens to the other two bridges.

Q. Well now, Mr. Hunter, I have just a few more questions. Will you kindly turn to your Exhibit 19, page 12. I find on that page 12, Mr. Hunter, a figure of \$809,663 available for return under the existing rate structure. It says, [fol. 551] "Available for return under existing rate structure, \$809,663".

A. Yes.

Q. In order to get that figure you have figured your amortization on that same figure of \$6,880,000 to which we have already referred, haven't you?

A. Now, I want to correct the exhibit along that particular line before answering that question and then I will answer the question. In the case of depreciation, on page 5 we show the depreciation computed on a 6 per cent sinking fund, and on that same page we show that the amount considered was \$6,880,000. Now, inadvertently there was an error made in this particular item in this way: Our original figure for investment, as developed from the books and the amount allowed for land as shown in the books, was \$8,017,158. It is upon that rate base or that figure that we computed a sinking fund on a 6 per cent basis, and that results in \$200,465; whereas, we should have used the annuity shown on page 26 amounting to \$171,956 if we were going to be consistent and follow what this exhibit shows. After discovering that situation we computed that to see what sinking fund allowance that would amount to based upon \$6,880,000, and it results in 4.6 per cent. Therefore, if we employ that amount the exhibit should be corrected to read "Depreciation (4.6 per cent)" instead of 6 per cent. Now, I wanted to give that explanation before proceeding to the question you last asked.

Q. And your depreciation figure has been based, however, on an investment of \$6,880,000, has it not, your revised figure?

A. If we employ the \$6,880,000 investment, then the rate for sinking fund that applies in this case is 4.6.

[fol. 552] Q. Yes. Now, if, as a matter of fact, your investment is \$1,000,000 too low and if, as a matter of fact, the figure should be approximately \$7,800,000, then naturally the application of the 4.6 per cent sinking fund rate would give a total amount larger than what you have just testified to, would it not?

A. That is correct; to the extent that that amount is increased it increases the sinking fund annuity.

Q. And your return, as I think you have already testified to, is also based on \$6,880,000?

A. That is correct.

Q. Referring again to page 12, you show there, do you not, that disregarding any stimulation in the volume of business you show there a reduction of 39.1 per cent in the revenues from automobiles and auto passengers? In other words, that would be the effect of the application of this 50-cent rate to the business as there shown?

A. If it amounts to that percentage. Over in the last column is the amount estimated, decrease, under this other rate structure.

Q. In other words, this tabulation proposes a cut of substantially 40 per cent in the Company's automobile and passenger fares?

A. It is a little less than 40.

Q. 39.1 per cent, isn't it?

A. Very well.

Q. But we are here confronted with a practical situation in which, after 10 years, we are through?

A. That is so.

Q. And I suppose the depreciation annuity will have to be considered on the assumption that in 10 years we are out?

A. That is the way it stands today.

Mr. Thelen: That is all, thank you very much, Mr. Hunter.

Mr. Rohde (San Francisco Chamber of Commerce): Mr. Hunter, you have stated that on the basis of estimated earnings [fol. 553] ing a toll of 50 cents for a passenger car and 5 passengers would be advisable and return 8 per cent, have you not?

A. Yes, slightly over 8 per cent.

Q. Have you made any study of the possibilities of reducing the toll on freight carrying vehicles and on the freight itself?

A. No. However, I think that is an item that should be explored. I was hopeful some of the truck operators would make some studies along that line. We made this study because we thought it was the outstanding situation that should be adjusted, but it may well be that the freight situation should be studied and perhaps adjusted. However, we have not made other than this automobile study.

CHARLES DERLETH, JR., a witness called on behalf of American Toll Bridge Company, being first duly sworn, testified as follows:

Direct examination:

Mr. Thelen: Dean Derleth, will you kindly state your present position in connection with the University of California?

A. Well, I am the Professor of Civil Engineering of the University of California and also I am the Dean of the College of Engineering in the University of California at Berkeley.

Q. Will you please tell us something of your training and experience, and please don't be over-modest about it. The Commission will be interested in the facts and the positions which you have held in a professional capacity, and so on. Just state it in your own way, please.

A. Well, as to education, I am a graduate of the College of the City of New York and received a degree of bachelor of science in 1894. I then went to Columbia University, in [fol. 554] New York City, as a student in the school of mines and engineering. In 1896 I received the degree of civil engineer, commonly called C. E. Then a good many years later the University of California did me the honor in 1930 of awarding me the degree of bachelor of laws, L. L. D.

Q. Doctor of laws?

A. I mean doctor of laws. Since 1896 I have been uninterruptedly connected with schools of engineering, but at the same time I have also uninterruptedly been a practicing engineer. Speaking of the teaching profession, from 1896 to 1899 I was instructor in civil engineering in Columbia University, and for the next few years, 1899-1901, I had the



title of Lecturer in the Department of Civil Engineering at Columbia University.

I came west in January, 1902. I was Professor of Civil Engineering at the State University of Colorado from 1902 to 1903. I was then invited by President Wheeler to join the faculty of the University of California. I came here in August, 1903, and I have been here ever since. I started with the title of Professor of Structural Engineering which later, in 1907, 4 years later, was changed to Professor of Civil Engineering, and head of the department. And at the same time I was selected by the Regents of the University as the Dean of the College of Engineering. I held those two offices until 1930, at which time there was a coalition of the College of Civil Engineering and the College of Mechanical and Electrical Engineering, and I retained and still hold the position of Professor of Civil Engineering and the head ship of the Department of Civil Engineering, but since 1930 I have been the Dean of the joint colleges, civil, electrical and mechanical engineering, and those positions I hold today.

[fol. 555] Q. Will you be so good now, Dean, to tell us something of your professional work outside the University walls?

A. As I have already stated, I started as a practicing engineer in 1896 in New York City. I became, fortunately for me, the chief assistant to William H. Burr, who was head of the engineering school at Columbia and at the same time a consulting engineer of international reputation. That gave me a very promising start. And during this period in New York from 1896 to 1901 I had the good fortune as a young man to be directly connected with heavy construction, foundations and buildings and bridges. For example, as Mr. Burr's assistant, I designed in 1897 to 1899 and was instrumental in the construction of the City Island Bridge, which is in the upper reaches of the East River where it joins Long Island Sound. That bridge in those days cost nearly a half million dollars. You can judge for yourself what it would cost today. It had six or seven piers in deep tidal waters, all of them constructed by cofferdam process; it had a draw span and a number of approach spans, was a highway bridge which carried also the street railway. It is in the neighborhood now of what

is known as City Island, bordering the Bronx and Bronx Park.

I also at that time was connected with Mr. Burr in the Kings Bridge which crosses Harlem at its northernmost part where it joins the Hudson at the head of Manhattan Island. That was also a draw span, a much heavier bridge and cost a good deal more money. We designed a good many of the structures. For example, one of the first designs was during McKinley's administration for the Memorial Bridge across the Potomac, for which Mr. Burr received first prize; also bridges at Niagara Falls and Zanesville, Ohio. Personally, I was the engineer—I think that was in 1899—for the sewer system for the City of Sandyville near Lake George. I think that indicates the type of my experience while in New York at the time I left to go west in January, 1902, to the State of Colorado.

While at the University of Colorado for three semesters, January, 1902, to August 1903, I became what would probably be the consulting engineer and the superintendent of grounds for the University, and I was the engineer in partnership with an architect at Pueblo and we built the library building, the engineering building, and I built a dam or lake on the campus and installed at the campus the first central heating system for the various buildings, with a central heating plant, in the engineering group. I also had a consulting practice in Denver, particularly on dams.

Since I came to California in August, 1903, I have been uninterruptedly connected with, fortunately for me, very heavy work.

Q. We would be very much interested if you would give us a list of the various projects in which you have been connected in California, Dean?

A. Well, from 1903 on, for more than two decades I was the consulting engineer on all the buildings at the University of California, associated with John Galen Howard, who was the consulting architect, supervising architect. I may say I think, frankly, I was the responsible engineer for the design of such buildings as California Hall, the Library, Agricultural Building, that were built in those years, one [fol. 557] of the first one known as Agricultural Hall, about 1910; built the LeConte Hall for psychics, Gilman Hall for chemistry; I was the responsible engineer for the Doe Library at the University, for the Stephens Union, and

on the Sather Tower, that is, the Campanile. I not only designed but supervised the construction of that tower and a number of others. I think that indicates the type of work I did for the University and for the architect, Mr. Howard.

In these earlier years from 1903 to, say, 1918, I was consulted as a consulting engineer on buildings throughout the Pacific Coast region, Los Angeles to Portland. I remember in 1914, with a local architect, Mr. Hobart, I worked for the Federal Government, and I presume it would be called the Treasury Department, in building the great Post Office at Portland, Oregon, with very deep foundations close to the Willamette shore. There were any number of buildings here in San Francisco, some in Stockton, many in Berkeley and Oakland, such as the Oakland Auditorium. I was the consulting engineer for that. But when it comes to building work, one of my most significant employments was from about 1910 to 1918 by the City of San Francisco. I was in that period the consulting engineer to the Bureau of Architecture in San Francisco and reported to the Board of Works. I was the consulting engineer, working with the Architectural Commission that had been appointed at that time, consisting of John Galen Howard, Frederick Myer and John Reed. It was our purpose to build up San Francisco at that time. I was consulting engineer on practically innumerable buildings, including the great hospitals and many schools like the Girls High School and the Polytechnic High School. The [fol. 558] reason I speak of that employment principally is that I was the consulting engineer to San Francisco's Civic Center in those years and myself designed the Auditorium Building and supervised its construction, and I was responsible as a consultant of the City for the other portions of the Civic Center.

About 1910 I became interested in bridges in this community, just as I had been in New York City a decade earlier. And in 1922 I became the chief engineer of the Carquinez Highway Bridge and held that position throughout its construction and later for a number of years acted as consulting engineer to the American Toll Bridge Company until about 1933. For more than 25 years I have uninterruptedly been the consulting engineer to Alameda County, reporting and consulting with the County Engineer. We have built innumerable highway bridges, con-

crete and steel in Alameda County, for which I think I may frankly say I was responsible, and the largest of those bridges actually built is the Park Street Bridge recently completed across the estuary at a cost of approximately \$1,000,000. It is a Bastule bridge of the latest type and has two very difficult cofferdam foundations as a support to the two Bastule arms. It is a very large Bastule bridge.

I have been consulted on the design and construction of bridges in many of the counties of this State. In 1929 I was appointed a consulting engineer on the Board of Consulting Engineers for the Golden Gate Bridge, which position I held throughout the designing and the construction, and I closed that employment with the Golden Gate Bridge [fol. 559] last June just after the bridge was open to traffic in the last week of May, 1937.

In 1930, I think it was, I became a member of the Board of Consulting Engineers for the San Francisco-Oakland Bay Bridge, of which Mr. Charles Purcell is the chief engineer, and I held that office throughout the design and construction of the bridge until January, 1937, two months after the bridge was open to traffic, I think it was.

I might say, too, in closing, that I have been interested in the bridging of San Francisco Bay since 1910. I remember Mr. Charles Evan Fowler, the well known bridge engineer, planned a cantilever bridge from Goat Island to Telegraph Hill. He wanted me to be one of his engineers, which I declined. But between that period and 1930 I have been connected with private parties on more than one occasion seeking franchises for transbay bridges.

Mr. Thelen: Mr. Derleth, there are one or two additional matters in connection with your experience to which I think it might be desirable to refer. I would appreciate it if you would advise the Commission in a little more detail of the experience which you have had in your professional work, in connection with dams, ocean piers and tunnels.

Q. Well, I omitted that yesterday. Of course, I became so bridge-minded listening to the testimony all day that I overlooked it: I will be brief.

On dams I recall that in March, 1918, the Calaveras Dam failed, which had been built, you will remember, by the hydraulic process. The Spring Valley Water Company retained me in May, 1918, as one of its consulting engineers [fol. 559½] to examine the structure and recommend its re-

construction. I worked with the late Allan Hazen, a man of national reputation, particularly on water filtration and water works structures, and with the chief engineer of the Spring Valley Water Company, Mr. George A. Elliott. We pursued that investigation and the reconstruction of the dam for the next two or three years. At the same time I built or prepared the plans for the Spring Valley Water Company for a large intake tower in Calaveras Lake back of the dam, with a tunnel through the westerly hill abutments to drain the lake in case of an emergency.

Throughout the last 25 years I have frequently acted as consulting engineer on other dams, particularly on multiple arch dams. I will name one or two—the Hodges Dam near San Diego and the Little Rock Dam near Palm-dale in the Mojave Desert.

On ocean piers, in 1912 the Regents of the University of California asked me to prepare plans and construct an ocean pier at La Jolla for the Marine Biological Station, and that ocean pier, Ocean exposure, is there today in good condition. In the late 20's I was employed for four or more years by the Pacific Western Oil Company, which had a petroleum field at Elwood, out in the ocean at Elwood, about 20 miles north of Santa Barbara, and I made the plans and supervised the construction of a number of ocean piers that run far out into the ocean.

I also have been consulted on many docks. And finally as for the tunnels, I was the principal consulting engineer to Alameda County throughout the inception, planning and final construction of what is now called the Posey Tube, [fol. 560] which is a sub-aqueous tunnel under the estuary between the Cities of Oakland and Alameda, and replaced the old Webster Street bridge.

Finally, I have been throughout the period of its promotion and planning and construction the chief consulting engineer for the Broadway low level tunnel which was opened to traffic on December 5, 1937. That is also about a \$5,000,000 project.

Q. Mr. Derleth, I believe you testified that you were the chief engineer of the American Toll Bridge Company in connection with the Carquinez Bridge project and you were appointed, I believe you said, in September, 1922?

A. September 22, 1922, I was appointed officially.



Q. How long did you have an official connection with that Company in connection with that project?

A. Until 1933.

Q. Will you please state the extent of your contacts with the work on the Carquinez Bridge while that bridge was under construction and prior thereto, just in a general way, and then we will follow up with more detailed questions?

A. That is a long story and if I become too detailed I trust I may be stopped.

Q. Well, Mr. Derleth, were you on the ground at various times in connection with that construction?

A. I lived on the construction and throughout all of these preliminaries, and in courts and in New York and Washington, as I will explain if it is desired.

Q. Then I take it you are personally familiar with what was done, when it was done and why it was done?

A. I was at all times an eye witness and the deciding agent for the construction.

[fol. 561] Q. Will you please just start with the earlier days of the project and in your own way advise the Commission as to what took place and when it was done. I may interrupt you from time to time with further questions.

A. I think I should first say something about the early period preceding the franchise on February 5, 1923. Preceding 1920 the Rodeo-Vallejo Ferry Company operated on a long water route from the City of Rodeo, through Mare Island Strait to docks in the Port of Vallejo. They were threatened because of the building of a Six Minute Ferry from Valona to Morrow Cove on a short run across the Carquinez Strait at its western end. For that reason the Rodeo-Vallejo Ferry Company moved its southern ferry slips from the City of Rodeo farther east to what they call, I remember, the short-way pier between Oleum and the Selby Lead Works. That shortened their route but they still ran to the City of Vallejo. There was keen competition which nearly broke the Rodeo-Vallejo Ferry Company but promptly bankrupted the Six Minute Ferry Company. So in the period about 1920 the Rodeo-Vallejo Ferry Company bought the bankrupt properties and got possession of the lands along the water front both at Morrow Cove on the north and at Valona on the south strait.

Q. Those were the properties formerly owned by the Six Minute Ferry Company?

A. They were. I speak of that because that later became a very important fact. The law at that time required a bridge franchisee to own its water terminals. Thus the Rodeo Ferry was able to change its water route to its final position that they continued until the bridge was completed in 1927. That is, it operated from slips at Oleum [fol. 562] to Morrow Cove. The reason the Ferry Company did not use the southern slips of the Six Minute Ferry was that the highways were in very, very poor condition between Oleum and Crockett, and also I might say at this time that the highways from Morrow Cove to Valona were nothing to be proud of. In fact, that was in the early days of highways throughout the State, and the Carquinez Bridge I think I may properly say invited an early improvement of highways between Oakland and Sacramento. Under those conditions, by 1922 the traffic of the Rodeo-Vallejo Ferry Company began to increase and the property was looked upon as a valuable property. So a number of other groups came into the field and threatened its property existence.

Q. Those other groups, I take it, were applicants for franchises for the construction of bridges at some points across the Carquinez Straits?

A. It turned out there were two such companies in the first instance and they proposed in the summer of 1922 to apply for bridge franchises at the east end of the Strait, and the reason for that was that the laws of those times prevented a competing property within two miles of an existing utility, whether bridge or ferry. They had the disadvantage, as I know definitely and can prove, of having a site that was undesirable.

Q. That site would be at least two miles east of the location of the present bridge, I take it?

A. And where there were no highways on the north side and the land, if you will examine it to this day, is four to five hundred feet high and it would have been a very difficult approach. Nowhere on the south side—and in fact, there was discussion at that time by the San Francisco [fol. 563] Transit Company that they would find a way through to Franklin Canyon, which would have meant either steep grades or very circuitous connections or a very expensive tunnel.

Q. Can you give us the names of those rivals without going into too much detail concerning them? Who were these various aspirants for bridge franchises?

A. Well, I will try to be brief. Because of these friends the Rodeo-Vallejo Ferry Company on September 19, 1922, amended its articles of incorporation and applied for a franchise to the Contra Costa Supervisors. About a week earlier, on September 14, 1922, the San Francisco Transit Company asked for a franchise at the east end of the Strait for a suspension bridge, and a second company on the same date, September 14, 1922, called the Dillon Point Development Company, asked for a franchise practically in the same location, slightly east of the Transit Company. I will say, too, that those rival companies had very powerful backing, particularly as I observed it, from the actions in the hearings before the Supervisors, around the navigation interests, and they continued that opposition throughout the formative period up to say January 1, 1924, and caused the Ferry Company which later became the Bridge Company, a great deal of expense in litigation and in other ways and many delays.

Now, at that same time, to be specific on March 5, 1923, even after we had a franchise, in February, the Crockett Land & Cattle Company became a third applicant. They received no franchise from the Supervisors. I should say that the Crockett Land & Cattle Company was owned by Mr. Hannah, who possessed the land on which we ultimately built piers 10 and 11; and he kept us off of that land until [fol. 564] a year after the franchise. We had to go to court. I wish to be very specific on that point and probably will be later on.

And lastly, so late as July 27, 1923, a new company was formed called the Northern California Development Association which, if my memory serves, contained some of the men from the San Francisco Transit Company, and they presented and forced an initiative petition before the Contra Costa Board of Supervisors demanding and asking for a bridge franchise which, after a formal hearing, the Supervisors denied, and the case was carried to the California Supreme Court and dismissed. I think after that we had no further opposition in the sense of having competing companies demanding franchises.

Q. However, you did have opposition of other types, did you not?

A. Very decidedly. Some was opposition and the other was really friendly, may I call it, cooperation in the sense of determining to what extent we might have access or easements over their lands. Before I speak of that, along in November and December, 1922, it began to appear that the Rodeo-Vallejo Ferry Company had the best chance to receive a franchise because of the evidence submitted, and the navigation companies became powerful in objection, principally the Matson Navigation Company and the California-Hawaiian Sugar Refining Company. In all fairness to those two groups I must say that they were most strenuous in their opposition throughout the entire life of the construction period, until we finally put the navigation lights in the completed fender in February, 1931. They caused a great many delays and a great deal of expense and litigation, many hearings not only before the Supervisors [fol. 565] but before the War Department and also before the State Engineer of California, for reasons which I can explain.

Q. And was this opposition responsible for some of the delays in securing the necessary permits from the War Department?

A. Very decidedly. Their opposition caused us to make many different plans, many surveys, in order that we could collect data to be submitted with our application for permit, and these data were requested by the Chief of Engineers in Washington. I can speak of that in great detail if desired.

Q. Well, you have referred so far to some of the initial difficulties and obstacles and to the time necessary to secure the franchise from the Board of Supervisors of Contra Costa County and you have just touched slightly on the War Department situation. Now, can you develop some of the early history of the project a little further?

A. Yes, sir. So far I have attempted to give a brief picture of that early period between September 22, 1922, when I became the chief engineer, and the time that I finally received our first War Department permit on April 1923. Now, that was a very strenuous period and only those who were on the site, so to speak, know how much work was done of an engineering and even a construction nature. We had to make surveys, which were very extensive, on both sides of the Strait in order to triangulate and locate the probable piers; we made current measure-

ments in the Straits, all of which required equipment which was very expensive; we made plans galore, as I will show. We had many hearings before the Supervisors and a number of hearings in November, December and as late as March, 1923, before the War Department. All of that re-[fol. 566] quired a staff. So on January 24, 1923, I appointed my chief consulting engineer, William H. Burr, who had been my teacher 30 years before and of whom I spoke yesterday. He is a national bridge engineer and gave us much help in the later financing because of his connections in New York City. On May 11, 1923, after we had a definite permit, I appointed my chief designing engineer in New York, Mr. David B. Steinman. We had designing offices both in New York, near Mr. Burr, and designing offices at Crockett. I should say, too, that in this early period I finally selected the late Mr. George J. Calder, who became my resident engineer throughout the work and after I retired as chief engineer he became the chief engineer of the American Toll Bridge Company and a vice-president later, on the Board of Directors. I should say, too, in that early period that as early as November, 1922, I prevailed upon the Company to let me select the most prominent geologist, because the engineers and experts of the San Francisco Transit Company particularly began to attempt to prove that the Franklin fault ran through our bridge. So Mr. Lawson was appointed the geologist. He was later geologist both for the Bay Bridge and the Golden Gate Bridge.

Q. That was Professor Lawson of the University of California?

A. Yes, sir. He made finally his geological report, as I recall it, in August, 1923, and in the previous 3 or 4 months he supervised the diamond drill borings and other foundation explorations.

Of course, I had in addition a large staff of assistants to do the surveying and all the detail work and, of course, men to operate tugs and to build the construction wharf [fol. 567] at Valona which became the base of my operations and my western offices for engineering.

I think, then, I should say something about plans. Between October, 1922, and February, 1923, with this organization that I have described, I prepared for the hearings before the Supervisors no less than five different plans for crossing the Strait at Valona. Three of these were



suspension types, suspension bridges, and two were cantilevers. After two or three hearings, in December of 1922, the California-Hawaiian Sugar Refining Corporation and the Matson Navigation Company finally presented their very strenuous view as to where the piers might be and what the spans should be and the clearances, and they criticized my five original plans which were presented in the early days both to the Supervisors and the War Department in November, 1922. And I think I should read a clause from their final letter during these negotiations. The letter was dated January 4, 1923, and was addressed to the Supervisors of Contra Costa County and, as I recall, it was on the Sugar Company's rather than the Matson Company's letterhead. And this is the clause which I wish to emphasize. They said that they would not object to a bridge such as we finally built provided "The first southern pier, water pier, should be placed wholly within the south pier head line of the Strait," and they at that time defined that south pier head line in their own language because the War Department had not yet officially established it. They said that south pier head line should be a straight line or within a straight line drawn from the northwest corner of the California-Hawaiian Sugar Refining Corporation's wharves and to a point at the north-[fol. 568] east corner of the Selby Wharf and "with the next pier north not less than 1000 feet northerly from the pier last described".

Q. What was the effect of a requirement of that character on your work?

A. Well, it fundamentally changed the designs for the suspension bridges because I had thereby to use a much longer central span which greatly increased the cost of the suspension bridges. You see, I had to have a tower pier on the south pier head line and then the next pier had to be near the other shore. And as I will explain later, if desired, I finally selected the span of 1950 feet, which at that time was the longest span of any that had yet been attempted, because in the Philadelphia bridge the span was 1750 feet, and we were having enough objections—experts were saying we never could build the bridge even if we had the money because we could not build piers in such deep water and in such swift currents, and they gave us a lot of trouble with financing and in many other ways because we were in a pioneer position. The people

of this community, in Northern California, were not bridge-minded and we had to overcome the inertia of public opinion. And with experts telling the public we would never finish the bridge even if we were serious, it was very hard going, we will say. Other than that, there were other groups who were proclaiming from the house tops that we were not seriously intending to build the bridge but were determined to prevent these two other companies from building bridges at the east end of the Strait. So the Supervisors at the hearing in January, 1923, accepted this, as I will call it, dictum of the navigation interests. I then proceeded to [fol. 569] revise these previous plans and immediately in February presented to the Supervisors two plans, one for a suspension bridge with a 1950-foot central span and the other design was, with very, very minor details, the bridge as I actually built it and as it exists today—a cantilever bridge with two main openings of 1100 feet each and the crucial center pier which became the object of great attack and which is the key to the entire construction and later required long discussion with the War Department, in the face of the opposition, as to what should be the proper fender in that swift tidal stream, deep and with tides both ways and with ocean-going vessels.

So in March of 1923, after the Supervisors had given us the franchise, since both designs satisfied all of the objectors, we renewed the so developed permit applications to the War Department. I should say we made our first applications in October, -I think it was, 1922, and, as developments occurred we submitted the developing and subsidiary data. And Mr. Hanford, the president of the Ferry Company, and myself then jointly signed the renewed applications in March, 1923.

Q. As I understand it, it took almost six months to get the first War Department permit after you made application for it?

A. And with very much cost, not only for the construction equipment I needed and the docks I had to build and the engineers I had to employ, but we had many lawyers, too, and they were our chief expense.

Q. I take it, then, Dean Derleth, you can not build a bridge at this time with one day's notice and have everything ready to start on one day?

A. No. I said yesterday that I was fortunately a member of both the Golden Gate and the Bay Bridge Boards

[fol. 570] and I have been on many bridge projects and we always spent lots of money and consumed lots of time and we met much opposition on every project, and the history, if I gave it to you here, of the two great bridges in San Francisco Bay would prove my statement.

\* \* \* the War Department finally did, after days of waiting on our part, grant us a permit on April 17, 1923. And I consider that date the beginning of our real energies in preparing what I call contract plans and in getting very expensive information, such as the diamond drill borings and other exploration data for the basis of these design plans. And I think I have a right to some pride in saying that we did all of that work and completed these stupendous plans on a pioneer work, against opposition, in a short period and we signed all the plans, what I call the contract plans, in November and December, 1923.

Q. Well now, I will ask you whether you happen to have a few photographs that may be illustrative of some of the work done during this earliest period concerning which you have testified?

A. Yes, sir, I have a lot of photographs here. Fortunately, as we look back, I took progress photographs very generously. I think we took 2000 photographs that are of record.

Mr. Derleth, do you first have a photograph which is marked "2" entitled "View of boring machine, May 10, 1923"?

A. Yes, sir. Let me say that I began expensive boring operations on April 2, 1923, 15 days before we had any idea when we would get a franchise.

Mr. Thelen: If the Commissioner pleases, in connection [fol. 571] with each of these photographs, I think as I refer to each by number and designation I will ask that it be introduced in evidence and given an exhibit number so that the record may show clearly what the witness is testifying to. I will ask that this photograph which is marked "2" and entitled "View of boring machine, May 10, 1923," be introduced in evidence as Exhibit No. 1 of the American Toll Bridge Company.

Commissioner Riley: It will be Exhibit 24.

Mr. Thelen: Have you another photograph numbered 6" which is entitled "Boring machine at Pier 5, May 15, 1923"?

A. Yes, sir.

Mr. Thelen: I ask that that photograph be marked as the next exhibit, No. 25, of the American Toll Bridge Company.

Commissioner Riley: It will be marked as respondent's Exhibit No. 25, so received by the Commission.

Mr. Thelen: Have you comments concerning that photograph, Mr. Derleth? By the way, Mr. Derleth, you have had pinned on the blackboard a blueprint, and for purposes of identification, will you read the legend which appears at the lower righthand corner?

A. The title of this sheet is "Proposed highway bridge across Carquinez Strait, California, from Valona to Marrow Cove, revised application by the Rodeo-Vallejo Ferry Company, Aven J. Hanford, President, C. H. Derleth, Jr., Chief Engineer, William H. Burr. Consulting Engineer, October 17, 1923".

Q. And was that prepared under your general supervision?

A. That drawing shows the bridge as finally developed in the contract plans after the permit of April 17, 1923.

[fol. 572] Mr. Thelen: We ask that that blueprint be introduced as Respondent's Exhibit 26, I think it is.

Commissioner Riley: If no objection it will be received and marked Exhibit 26 by the respondent.

Q. Was it necessary at a subsequent time to tear down that structure of the Six Minute Ferries?

A. We had to tear it down, tear down about half of it, from a point somewhat south of the picture in photograph No. 6 and all the way to the location of Pier 4, a distance of some 700 feet. The reason we had to tear it down was that it was in the way of the construction of Pier 5, also Pier 6 and it was in the way of the erection of false work for the south anchor arm and it was in the way of Pier 4.

Q. Have you examined Railroad Commission's Exhibit No. 3 prepared by Mr. Mitchell?

A. I read it very carefully.

Q. Did you find in that any item of cost for the tearing down of that trestle?

A. No, sir.

Q. Have you another photograph numbered 11 and entitled "Diamond drill at Pier 4, May 24, 1923"?

A. Yes, sir.

Mr. Thelen: We ask that that photograph be marked as Respondent's Exhibit No. 27.

Commissioner Riley: It will be so received.

Q. Now, have you another photograph, No. 26, entitled "Preparing casing for diamond drill at Pier 3, June 27, 1923"?

A. Yes, sir.

Mr. Thelen: We ask that that photograph be marked Respondent's Exhibit No. 28.

Commissioner Riley: It will be so received.

Mr. Thelen: Please proceed.

[fol. 573] A. Photograph No. 26, dated June 27, 1923, shows the floating equipment out in the middle of the Strait at the site of Pier 3, the central tower, which I will call the crux of the construction. The water there when we started was 80 feet deep and later with scouring reached a maximum depth of 115 feet and in very soft ground with rock at a depth of 135 feet.

Q. By the way, what was the speed of the current there in the Carquinez Straits?

A. It usually ranged between 5 to 7 feet per second but on rare occasions it reached 9 feet.

Q. Is that a normal speed in connection with water operations or not?

A. No; it is a very high speed.

Q. How does it compare with comparable speed in this vicinity, do you happen to have figures available?

A. It is slightly higher than the speeds we got at the Golden Gate Bridge and very much higher than the speeds of the Bay Bridge.

Q. Well, I am interrupting you, but may I ask you another question? You spoke of this work being done by Duncanson & Harrelson people on a cost plus basis; would it have been feasible to have had this work done under a lump sum contract?

A. Not at that period.

Q. Looking back now over the arrangement that was made with the Duncanson-Harrellson people, Mr. Derleth, are you satisfied that, from the Company's point of view, the arrangement was a fair and reasonable one?

A. It was not only reasonable but unprecedentedly reasonable.



Q. Referring to this diamond drilling, I believe you have a photograph, No. 31, which is entitled "Diamond drill at Pier 3-B, July 5, 1923"?

A. Yes, sir.

Mr. Thelen: May we have that marked as Respondent's Exhibit No. 29?

[fol. 574] Commissioner Riley: It will be received as Respondent's Exhibit No. 29.

Q. Now, have you another photograph relating to diamond drilling, No. 37, entitled "Quadruple casing for diamond drill, August 2, 1923"?

A. Yes, sir.

Mr. Thelen: May we have that marked as Respondent's Exhibit 30?

Commissioner Riley: That will be received as Respondent's Exhibit No. 30.

Mr. Thelen: Will you please comment on that photograph?

A. Photograph No. 37, August 2, 1923, shows a tug boat taking a Haviside barge, a very large structure, out to Pier 3. It is leaving the construction dock, and on the barge, the Haviside barge or derrick, you see one unit of that multiple pipe, quadruple pipe shell, which is being taken out in the Strait to be driven for the next diamond drill in the manner that I have already described.

Q. I take it from the photographs that have been already introduced that you used a great deal of heavy equipment, barges and other equipment of that character?

A. Very expensive.

Q. Did you, in looking over the Railroad Commission's Exhibit No. 3, find any of that equipment set out definitely so that it could be identified?

A. No, sir.

Q. Was any time consumed in connection with condemnation proceedings and in connection with securing easements from the Southern Pacific Company across their right of way?

A. I said that we had completed the contract plans in record time. I think that is true. But I think we could have completed it more rapidly if we had not been in the [fol. 575] pioneer period and if we had not had to get ease-

ments and buy land for our approaches as well as for some portions of the main bridge.

Q. It was necessary, then, was it, to go through a condemnation suit before the right to utilize that land could be secured?

A. Yes, sir, before a jury in Martinez, and the verdict was rendered in our favor for a very small sum of money—I think it was less than \$12,000—on October 25, 1923. But the Judge instructed us we could not trespass on the property until after November 2, 1923. So I was unable to make any foundation examinations of that property until after that date, November 2, 1923. And, what was more important, I could not proceed with my claims for an easement over the Southern Pacific property and I could not design the final details of this viaduct.

Q. Suppose that some one had planned to start this Carquinez Bridge on a day, say, November 30, 1924; could all of these matters to which you have referred been accomplished the next day?

A. Certainly not.

Q. Is there any reason to suppose they would have taken any less time if you started on November 30, 1924, than starting on the day on which you started?

A. I shall be immodest. With the help of Mr. Aven Hanford, who was a driving force, the president of the Rodeo-Vallejo Ferry Company, I did all of this work, I think, with able assistants, quicker than it is normally done; and I ought to know, I have had experience with other work.

Q. You have one or two photographs, have you not, which illustrate the character of the ground at that point?

A. Yes, sir.

[fol. 576] Q. One of which is No. 832, is it not, dated March 20, 1926, and entitled "Valona slide from hole No. 1"?

A. Yes, sir.

Mr. Thelen: I would like to have that photograph introduced as Respondent's Exhibit No. 31.

Commissioner Riley: It will be received and marked No. 31.

The Witness: Photograph 832 is taken somewhat west of our bridge head and shows a piece of the old highway in

those days and indicates what the ground looked like that was moving down into the Strait and over the Southern Pacific right of way.

Q. Have you another photograph, No. 1337, which has on it the legend "Drains, beam reinforcing, Valona slide work, July 8, 1927"?

A. Yes, sir.

Mr. Thelen: We ask that that photograph be introduced and marked Respondent's Exhibit No. 32.

Commissioner Riley: It will be so received and marked Respondent's Exhibit 32.

Mr. Thelen: Do you desire to comment on that photograph?

A. Photograph 1337 shows the region where the State Highway Department and also the Southern Pacific Company removed mountains, I call it, of earth to take weight off of this hill and they drained it underneath and also on the top.

Mr. Thelen: We next offer in evidence, Mr. Commissioner, photograph No. 61 which is entitled "Office building, December 3, 1923", and ask that that take Respondent's Exhibit No. 33, I think it is.

Commissioner Riley: 33 is correct; so received and noted. Respondent's Exhibit 33.

[fol. 577] Mr. Thelen: We ask that the photograph numbered 84 which is entitled "Looking south along existing wooden viaduct between Piers 4 and 5, January 22, 1924," be introduced and marked Respondent's Exhibit 34.

Commissioner Riley: So received and marked Exhibit 34 by the Respondents.

Q. Have you another photograph along the same line?

A. The next one is dated September 12, 1924, and is entitled "Present bridge and false work for new bridge over S. P. tracks".

Mr. Thelen: We have that introduced as Exhibit 35?

Commissioner Riley: So received and identified as Exhibit 35 of the Respondent.

Mr. Thelen: May we have this photograph No. 330, which is entitled "Building new timber trestle, October 1, 1924," introduced and marked Exhibit No. 36, Mr. Commissioner?

Commissioner Riley: It will be received and noted as Exhibit 36 of the Respondent.

Mr. Thelen: We ask that photograph No. 355 which is marked "Construction wharf, October 4, 1924," be introduced and take Exhibit No. 37, I believe, of Respondent.

Commissioner Riley: It will be received and marked Exhibit 37 of the Respondent.

Mr. Thelen: Next we offer, if the Commission please, No. 366, which is a photograph entitled "Construction wharf, October 20, 1924," and we ask that that take No. 38, of Respondents.

Commissioner Riley: It will be received and marked Exhibit 38 of the Respondent.

[fol. 578] The Witness: ~~The next is a composite view of~~ four pictures, Nos. 384 to 387, inclusive.

Mr. Thelen: We ask that this composite picture be introduced and take our Exhibit No. 39.

Commissioner Riley: It will be received as Exhibit 39. Perhaps "Panorama" would be a better description of it, wouldn't it?

Mr. Thelen: Yes, that would be more accurate.

Q. Assuming that wharf and the additions to which you referred cost the Company approximately \$84,000, I will ask you from your long experience as to whether such a wharf would be included by engineers in the cost of excavation at so much per cubic yard, or the cost of concrete at so and so much per cubic yard? Have you ever run into such a situation?

A. That would be a very academic way to attempt to solve that question of cost. If, for no other reasons, in a great bridge you have more than one contractor and you have work progressing simultaneously, and it is much better and, so far as I know, it is always wisely done this way, that you lump this cost by itself as an item.

Q. Where you can see it and put your finger on it?

A. Yes.

Mr. Thelen: We ask that photograph No. 488 which is labeled "Addition to construction wharf, January 9, 1925," be introduced as Respondent's Exhibit No. 40.

Commissioner Riley: That will be received as Exhibit 40 of Respondent.

Mr. Thelen: May we ask that that photograph No. 501 which has on it the legend "Construction wharf, January 26, 1925," be introduced as Respondent's Exhibit 41.

[fol. 579] Commissioner Riley: It will be received as Respondent's Exhibit 41, by the Commission.

The Witness: I ordered picture 501 because on February 1, 1925, we entered what is termed the interim agreement with the Raymond Concrete Pile Company and I wanted evidence to show just what was the status of all our work and this is only one of about 40 photographs, as I remember it, that I had taken in the last week of January, 1925, to show the progress of Duncanson & Harrellson throughout the work and, of course, including some of those smaller contracts like McGill's excavation at Pier 1. This picture, perhaps better than the composite photograph of October 29th, shows the fruition of the Duncanson-Harrellson work and the essential completion of our base of operation.

Q. Now, as far as you have told us the story so far, up to January 26, 1925, the principal contractor was Duncanson & Harrellson?

A. Except for the small pieces of work done by McGill.

Q. You have been just speaking of work which the Duncanson & Harrellson people did on various piers, and I think you referred to piers 1, 2, 3, 4, 5, 6, 7 and 8 and perhaps some others. Do you have photographs which will show the situation at each of those piers?

Mr. Thelen: We ask that that photograph which is entitled "Concrete mixer at Pier 1, Anchor Day, September 29, 1923," be introduced and marked Respondent's Exhibit 42.

Commissioner Riley: It will be so received and noted.

Mr. Thelen: The photograph which bears the legend "Concrete forms at Pier 1, Anchor Day, September 29, 1923," we ask be marked Respondent's Exhibit 43.

[fol. 580] Commissioner Riley: So received and marked as Exhibit 43.

Mr. Thelen: Does that photograph give any indication of the type of excavation that was necessary in connection with Pier 1?

A. It does. It shows the rock excavation, alternate layers of sandstone and shale which break into unequal blocks.

Q. In your judgment, was the price of \$1 per cubic yard adequate for that type of excavation at that time?

A. Not unless you consider various other items separately, because it should be apparent from what I have been



saying that this pier was in a very isolated position and everything had to be brought to it; equipment, even water pipes had to be constructed, power had to be brought in from distance. You don't do rock excavation and trim it and shape it for \$1 per cubic yard.

Q. Have you also a photograph numbered 145?

A. Yes, sir.

Q. Would you like to refer to that next?

A. Yes.

Mr. Thelen: We offer this photograph numbered 145 and bearing on it the legend "Wind bracing anchorage for Pier April 29, 1924", and ask that it be introduced as Respondent's Exhibit No. 44, I think.

Commissioner Riley: It will be so received and noted as Exhibit No. 44.

The Witness: This picture shows one of the three pieces of structural steel, or a portion of the three assemblages. It is the wind anchor that sets on the middle of the shelf of Pier 1 and to which at later dates the American Bridge Company anchored the horizontal floor framing to brace the superstructure laterally. It was imbedded in the pier, [Exhibit 581] all except that top portion which sticks out, and to be seen to this day on the shelf of the pier.

Mr. Thelen: Have you examined the estimate for Pier 1 in Railroad Commission's Exhibit No. 3?

A. I have.

Q. Were you able to find in there any reference to that anchorage?

A. The author of Exhibit 3 apparently was not aware of this structural steel. It is not in the estimate and it is not a part of that total purchase by the American Toll Bridge Company in 1923—structural steel not only for piers 1 and 5, as already stated, but also the heavy anchor bolts for Piers 2 and 3 and for Piers 6, 7, 8, 9, 10, 11 and 12. That material was purchased, and I had my designing engineer, Steinman, in New York prepare special drawings at that time and we got bids for that steel in these early years.

Q. Were you able to find any of that material in the Railroad Commission's Exhibit No. 3?

A. No, it does not appear anywhere; apparently the engineer felt that all of this was in the final American Bridge Company contract of April, 1925.

Q. And as you have testified, that was not the fact?

A. It is not the fact.

Q. Would you like to refer to 147 next?

A. 147, yes.

Mr. Thelen: May we ask that photograph numbered 147 and entitled "Pier 1, looking west, May 9, 1924," be introduced and take Exhibit No. 45?

Commissioner Riley: So received and marked.

Mr. Thelen: Next we offer No. 153, bearing on it the legend "Setting wind bracing anchorage at Pier 1, May 20, [fol. 582] 1924," and ask it be introduced and take Respondent's Exhibit No. 46.

Commissioner Riley: So received and noted as Exhibit 46.

Mr. Thelen: This steel in the middle of the photograph is technically called structural steel, as distinguished from the reinforcing bars, is that right?

A. That is right.

Q. I take it you were unable to find that piece of structural steel in the Commission's Exhibit No. 3?

A. No, it is not in evidence in the estimate, nor is its sister piece on the other end of the pier.

Q. I understood you just to refer to back-filling in connection with Pier 1. Were you able to find any item for back-filling in connection with Pier 1 in Railroad Commission's Exhibit No. 3?

A. No. Numberless items of that character throughout that Table 2 of Exhibit 3 are lacking and, as I have heard here in evidence, assumptions were made that unit prices include these things.

Q. Would engineers normally in making estimates of this type in which there is back-filling, Mr. Derleth, include it in some other item?

A. I think not; it is not the way to make an estimate, and particularly if you were the engineer for the contractor. He would either lose money or you would lose your job.

Q. Now, if you will kindly turn to Piers 2 and 3, you have some photographs illustrative of those piers also. I take it?

A. I have a considerable number of photographs. These are, after all, the crucial piers of the bridge. The first photograph is No. 242.

Mr. Thelen: We ask that that photograph which has on it the legend "Steel cutting shoe, caisson pier 2, August 1,

[fol. 583] 1924," be introduced as Respondent's Exhibit No. 47.

Commissioner Riley: So received and marked Exhibit No. 47.

Mr. Thelen: We next offer No. 243, which is entitled "Steel cutting shoe, caisson Pier 2, August 1, 1924," and ask that it be admitted as Exhibit No. 48.

Commissioner Riley: So received and noted.

Mr. Thelen: We ask that this photograph, which does not have a number on it and which is entitled "Caisson Pier 2, September 10, 1924," be introduced and take Respondent's Exhibit No. 49, if that is correct.

Commissioner Riley: That is correct; so received and noted as Exhibit 49 of Respondent.

Mr. Thelen: We ask that this photograph which is entitled "Floating caisson, Pier 2, September 29, 1924," be introduced and marked Respondent's Exhibit No. 50.

Commissioner Riley: It will be received as Exhibit No. 50 and so noted.

Mr. Thelen: We ask that the photograph which is numbered 339 and dated October 6, 1924, and which is entitled "Pile driver for setting guide columns Piers 2 and 3" be introduced as Respondent's Exhibit 51.

Commissioner Riley: It will be received and so noted as Exhibit 51.

The Witness: Photograph 339 shows the great railroad barge to which I have several times referred. You will see the two railroad tracks on it when it was used by the Southern Pacific Company for freight cars. On one end you will see the pile driver which rises over 100 feet high and which was used for setting and driving the great steel [fols. 584-585] guide columns of the guide frames at Piers 2 and 3. There were six of these guide frames which had to be built, of course. You will see various equipment in the neighborhood. All of this equipment was very heavy and very expensive.

Mr. Thelen: Were those guide columns and the driving hereof items of rather major importance?

A. Decidedly so, and very unique.

Q. Were you able to find in Commission's Exhibit 3 under Pier No. 2 any reference to these items?

A. None whatever.

Mr. Thelen: We ask that photograph 690, dated August 25, 1925, entitled "Pier 2-W, setting northwest guide column, August 25, 1925", be introduced and marked Respondent's Exhibit 52.

Commissioner Riley: It will be received and marked Exhibit 52, and so noted.

[fol. 586] Mr. Thelen: We ask that the photograph under date of October 13, 1924, having on it the legend "Caisson one, October 11, 1924," be introduced and marked Respondent's Exhibit No. 53. It bears no number.

Commissioner Riley: It will be received and noted as Exhibit 53.

Mr. Thelen: The next photograph dated October 11, 1924, has on it the legend, "One of the anchors to be used in holding caissons of center piers". We ask that that be introduced and marked Respondent's Exhibit 54. This particular photograph does not have a number.

Commissioner Riley: It will be received and noted as Exhibit 54 of Respondent.

Mr. Thelen: We next ask that photograph No. 377, dated October 24, 1924, having the legend "Setting anchors for caisson one," be introduced and marked Respondent's Exhibit 55.

Commissioner Riley: It will be received as Exhibit 55, so noted.

Mr. Thelen: We next ask that photograph No. 391, dated October 29, 1924, having on it the legend, "Caisson one" be introduced as Exhibit 56.

Commissioner Riley: So received and noted, Exhibit 56.

Mr. Thelen: We next ask that the photograph numbered 408, dated November 10, 1924, and having on it the legend "Caisson one", be introduced and marked Respondent's Exhibit 57.

Commissioner Riley: So received and noted.

Mr. Thelen: We now ask that the photograph which is numbered 412, which is dated November 10, 1924, and which has on it the legend, "Steel guide columns for caissons of [fol. 587] Piers 2 and 3", be introduced and marked Respondent's Exhibit 58.

Commissioner Riley: So received and noted.

Mr. Thelen: We now ask that the photograph which has on it No. 414 and which is dated November 12, 1924, bearing the legend, "Steel guide column, Piers 2 and 3", be received and marked Respondent's Exhibit 59.

Commissioner Riley: So received and noted.

Mr. Thelen: Next we ask the photograph which is numbered 417, dated November 14, 1924, and which has on it the legend, "Steel guide column, Piers 2 and 3", be introduced and marked Respondent's Exhibit No. 60.

Commissioner Riley: So received and marked Exhibit 60.

The Witness: View 417 is a heroic picture; it shows one of these huge steel columns in the guide frame and on floating equipment ready to be driven.

Mr. Thelen: We next ask that the photograph which is numbered 418, dated November 14, 1924, and which has on it the legend, "Setting guide column at Pier 3-B-W", be introduced and marked Respondent's Exhibit 61.

Commissioner Riley: So received and noted as Exhibit 61.

Mr. Thelen: We ask that the photograph numbered 421 and dated November 17, 1924, and bearing the legend "Anchorage system Pier 3-B-W" be introduced and marked as Respondent's Exhibit 62.

Commissioner Riley: So received and noted as Exhibit 62.

Mr. Thelen: I take it from what you have just said and from some testimony that you gave earlier that the anchorage system was rather an important part in connection with the construction of the bridge?

A. It was a major operation.

fol. 588] Q. May I ask you whether you were able to find in Railroad Commission Exhibit 3 any reference to any cost of any anchorage system?

A. None whatever except that in Exhibit 3—well, there is some reference in the construction of the fenders to items not accounted for; but if I am not mistaken, it refers to the possible cost of temporary ship fenders. There is no reference whatever in Exhibit 3 to the work of these guide frames at six places, or the cost thereof.

Mr. Thelen: We ask that photograph numbered 457 and dated December 17, 1924, and bearing the legend, "Anchor frame, Pier 3-B-W", be introduced next as Respondent's Exhibit 63.

Commissioner Riley: So received as Exhibit 63.

Mr. Thelen: We now ask that photograph No. 460, dated December 18, 1924, and bearing the legend "Towing caisson



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one to Pier 3-B-W" be introduced and marked Respondent's Exhibit No. 64.

Commissioner Riley: It will be received as Exhibit 64.

The Witness: View 460 was another historic accomplishment December 18, 1924. On that date we towed the first caisson into place. I speak of this with some feeling, as the chief engineer, because it was predicted the tides would take it away from us and smash the guide frame. We succeeded. I think the picture speaks for itself as to the heroic nature of the work. That sort of scene was repeated six times.

Mr. Thelen: We now ask that No. 468, dated December 23, 1924, and bearing on it the legend, "Driving guide column, Pier 3-B-W", be introduced as Respondent's Exhibit 65.

Commissioner Riley: It will be so received and noted. [fol. 589] Mr. Thelen: We now ask that No. 489, dated January 9, 1925, and entitled "Pier 3-B-W" be given our next Exhibit number, which I believe is 66.

Commissioner Riley: It will be received as 66, so noted.

Mr. Thelen: We now ask that photograph No. 493, dated January 15, 1925, and entitled, "View from north side of Strait, showing anchorage system at Pier 3-B-W", be introduced and marked Exhibit 67.

Commissioner Riley: So received and noted.

Mr. Thelen: We now ask that No. 497, dated January 19, 1925, and entitled "Anchor barge, Pier 3-B-W", be introduced as Respondent's Exhibit No. 68.

Commissioner Riley: Received and so noted as Exhibit 68 of the Respondent.

Mr. Thelen: May I now ask you, looking at that photograph, whether or not it was necessary in connection with these anchor barges, during the period of construction, to have the lighting and fog bell installations?

A. At all times on all floating equipment, particularly if it was fixed as this would be for a period in the navigation lanes, not only the War Department but the superintendent of the light house service of the Department of Commerce constantly had inspectors on hand who would instruct us what we must do. You will notice in similar pictures that we have a post there like a telephone pole and on it the regulation signals, lights, and in daytime the discs of different colors. You see also a bell for the foggy

days. Those requirements were very numerous and costly throughout the construction period and, of course, later on [fol. 590] the fixed bridge and its fender there are expensive fog signals and lights and even beacons on the high towers for airplane guidance.

Q. In your judgment, is the cost of these lighting signals and fog signal systems and so on properly to be taken as part of the construction cost?

A. Certainly.

Mr. Thelen: We ask that No. 499, dated January 21, 1925, and bearing the legend "Setting anchor east of Pier 3-B-W", be introduced and marked Respondent's Exhibit No. 69.

Commissioner Riley: It will be received and noted as Exhibit 69.

Mr. Thelen: We next ask that photograph No. 502, dated January 23, 1925, and marked "Pier 3-B-W" be introduced as Respondent's Exhibit No. 70.

Commissioner Riley: It will be received as Exhibit 70.

The Witness: This picture is the last of a series indicating the Duncanson & Harrellson work at Pier 3. The next picture will illustrate the interim agreement with the Raymond Company.

Mr. Thelen: We next ask that photograph No. 528 under date of February 18, 1925, and marked "Pier 3-B-W" be introduced and marked Respondent's Exhibit No. 71.

Commissioner Riley: So received as Exhibit 71.

The Witness: This view shows the state of the work when the Missouri Valley Bridge & Iron Company, the subcontractor to the Raymond Company, took over the work.

Mr. Thelen: We next ask that photograph No. 691, dated August 25, 1925, and which bears the legend "Pier 3-B-W, manifold for jet system, west side" be introduced and marked Respondent's Exhibit 72.

[fol. 591] Commissioner Riley: So received and noted, Respondent's Exhibit 72.

Mr. Thelen: And, as a matter of fact, the jet system is essential in connection with caisson construction, is it not?

A. Yes, sir.

Q. Were you able to find any reference to the jet system in Railroad Commission's Exhibit 3?

A. None.

Mr. Thelen: We now ask that the photograph numbered 781, dated December 21, 1925, and bearing on it the legend "Diver working on launching ways", be introduced and marked Respondent's Exhibit 73.

Commissioner Riley: It will be received as Exhibit 73.

The Witness: View 781 shows many pictures of divers which we used, not only used at the launch ways but also at Piers 2 and 3 and at Pier 4. Divers were used at various times throughout the work at these piers.

Mr. Thelen: May I inquire, Mr. Derleth, as to whether you have been able to find in Railroad Commission Exhibit 3 any reference either to the cost of launching ways or the cost of divers?

A. None whatever.

Mr. Thelen: We now ask that the photograph No. 65, which is dated December 12, 1923, and which has on it the legend "Concrete piles for Pier 4, Standard Supply Company yard, Oakland", be introduced and marked Respondent's Exhibit No. 74.

Commissioner Riley: It will be received and noted as Exhibit 74.

Mr. Thelen: We ask photograph numbered 96 and dated February 13, 1925, bearing on it the legend "Pier 4 looking east" be introduced and marked Respondent's Exhibit 75. [fol. 592] Commissioner Riley: So received and noted, Exhibit 75.

Mr. Thelen: We next offer in evidence photograph No. 100, dated February 18, 1924, labeled "Pier 4 looking east" and ask that it be marked Respondent's Exhibit 76.

Commissioner Riley: Received and so noted, Exhibit 76.

Mr. Thelen: We next ask that photograph No. 102, dated February 19, 1924, and marked "North side of cofferdam, Pier 4", be introduced and marked Respondent's Exhibit No. 77.

Commissioner Riley: So received and noted, Exhibit 77.

Mr. Thelen: We next ask that photograph No. 111, dated February 21, 1924, and bearing the legend "Lowering cofferdam Pier 4", be introduced and marked Exhibit 78.

Commissioner Riley: So noted, Exhibit 78 of Respondent.

Mr. Thelen: We ask that photograph No. 132, dated April 8, 1924, and marked "Pumps for use at Pier 4", be introduced and marked Respondent's Exhibit 79.

Commissioner Riley: Received and noted as Exhibit 79.

Mr. Thelen: We ask that photograph No. 216, dated July 16, 1924, and bearing the legend "Concrete piles for Pier 4", be introduced and marked Respondent's Exhibit No. 80.

Commissioner Riley: Received and noted as Exhibit 80.

Mr. Thelen: We next offer photograph No. 214, dated July 16, 1924, and bearing the legend "Diver at Pier 4", and ask that it be introduced and marked Respondent's Exhibit 81.

Commissioner Riley: All right, Exhibit 81.

Mr. Thelen: We ask that photograph No. 221, dated July 17, 1924, and bearing the legend "Driving concrete piles at Pier 4", be introduced and marked Respondent's Exhibit 82.

Commissioner Riley: It will be received and noted as Exhibit 82.

[fol. 593] Mr. Thelen: We ask that photograph 235, dated July 26, 1924, and bearing the legend "Barge load of concrete piles for Pier 4", be introduced and marked Exhibit 83.

Commissioner Riley: So received, Exhibit 83.

Mr. Thelen: We ask that photograph 255, dated August 11, 1924, and bearing the legend "Driving concrete piles, Pier 4", be introduced and marked Exhibit 84.

Commissioner Riley: It will be received, so noted as Exhibit 84.

Mr. Thelen: We ask that photograph No. 311, dated September 22, 1924, and bearing the legend "Hoisting concrete pile, Pier 4", be introduced and marked Respondent's Exhibit 85.

Commissioner Riley: So received and noted as Exhibit 85.

Q. Turning now to Pier 5, what is the next photograph that you suggest?

A. 141.

Mr. Thelen: We ask that the photograph which is numbered 141 and dated April 22, 1924, and which has the legend "I-beam grillages for Pier 5", be introduced and marked Respondent's Exhibit 86.

Commissioner Riley: It will be received and noted as Exhibit 86.



The Witness: View 141 shows some of the early structural steel which we specially purchased from the American Bridge Company, in this case for Pier 5. There were two sets of structural steel units like this, one at each end of the Pier, for anchoring the eye bars which, in turn, higher up anchor the base of the structural steel bents to support the south anchor arm of the bridge.

Mr. Thelen: As I understand it, Mr. Derleth, this is [fol. 594] another instance of the structural steel which is not included in the cost of superstructure and which apparently is not included anywhere in Railroad Commission's Exhibit No. 3?

A. Apparently it has been entirely overlooked, as is the similar steel at Pier 1, for example. The next is 344.

Mr. Thelen: Next we ask that photograph No. 344, dated October 6, 1924, and bearing the legend "Excavating at Pier 5", be introduced in evidence and marked Respondent's Exhibit No. 87.

Commissioner Riley: It will be received as Exhibit 87.

Mr. Thelen: We next ask that photograph No. 470, dated December 26, 1924, and marked "Pier 5, looking west", be introduced and given Respondent's Exhibit No. 88.

Commissioner Riley: It will be received as Exhibit 88.

Mr. Thelen: We ask that photograph 483, dated January 8, 1925, and bearing the legend "Realignment of Valona sewer to avoid Pier 6", be introduced and marked Respondent's Exhibit 89.

Commissioner Riley: Received and marked 89.

Mr. Thelen: We next ask that the photograph dated January 16, 1925, and bearing on it the legend "Removing cofferdam, Pier 5", be introduced and marked Respondent's Exhibit No. 90.

Commissioner Riley: Received as Exhibit No. 90.

Mr. Thelen: We next ask that photograph 506, dated January 31, 1925, and marked "Pier 5, looking west", be introduced and marked Respondent's Exhibit No. 91, I think it is.

Commissioner Riley: Yes, it will be received as Exhibit 91.

[fol. 595] The Witness: In view No. 506 you see the completed Pier 5 with the structural steel protected by covers until such time as the superstructure is constructed. The pier is complete. You see surrounding it still some of the

remains of the construction platforms of the cofferdam, and in the distance the main line tracks of the Southern Pacific. This view is taken on January 31, 1925, and belongs to that set of numerous views which I had taken on the day the Duncanson & Harrellson Company quit and the Raymond Company and its two sub-contractors began the interim work.

Q. Bearing in mind the situation there as you actually knew it and bearing in mind also your very wide experience in other engineering projects, I will ask you whether it would have been possible, if starting on November 30, 1924, the money being available but nothing having been done before then, and no money having been expended up to that date, whether it would have been possible to have completed this Carquinez Bridge at the time when it was actually completed and opened, which I understand was some time in May, 1927?

A. It would have been impossible, because you must first acquire your franchise, your permits, the approval from the California State Engineer, must make surveys and proceed as I have explained all through yesterday; must prepare plans and then call for bids. You would be working very rapidly if you did that work in 18 months.

Q. Now, as I understand it, we were going through a number of photographs, which we had almost completed, referring to work done during what we may call the Duncanson & Harrellson period, and I believe you have still a [fol. 596] few photographs remaining relating particularly to Piers 6, 7 and 8?

A. Yes, sir.

Q. And what is the first of those photographs?

A. No. 83.

Mr. Thelen: We now ask that photograph No. 83, dated January 22, 1924, and entitled "Looking south along viaduct approach", be introduced and marked Respondent's Exhibit No. 92, I think it is.

Commissioner Riley: It will be received and noted as Exhibit 92.

Mr. Thelen: Bearing in mind the swampy character of the ground shown on that photograph, would it have been possible to move that pile driver in without some sort of restle work?

A. The only way to do the moving would be by trestle. The water was shallow at low tides and high at high tides.

Mr. Thelen: We ask that photograph No. 484, dated January 8, 1925, and marked "Driving piles at Pier 6", be introduced as Respondent's Exhibit 93.

Commissioner Riley: So received and noted as Exhibit 93.

Mr. Thelen: We ask that No. 491, dated January 15, 1925, and marked "Pier 6-A-E" be introduced as Respondent's Exhibit No. 94.

Commissioner Riley: So received and noted as Exhibit 94.

Mr. Thelen: We ask that that photograph dated January 27, 1925, and marked "Pier 6", be introduced as Respondent's Exhibit No. 95.

Commissioner Riley: So received and noted, No. 95.

Mr. Thelen: We ask that photograph numbered 507, [fol. 597] dated January 31, 1925, and marked "Pile driver at Pier 7" be introduced and take Respondent's Exhibit No. 96.

Commissioner Riley: So received and noted as Exhibit 96.

Mr. Thelen: We ask that photograph No. 520, dated February 2, 1925, and marked "Pier 6-B-W" be introduced and marked Respondent's Exhibit No. 97.

Commissioner Riley: So received and noted.

Mr. Thelen: We ask that photograph No. 526, dated February 12, 1925, and marked "Taking jet soundings at Pier 8", be introduced and given the Exhibit No. 98.

Commissioner Riley: So received and noted as Exhibit 98.

Mr. Thelen: We ask that photograph No. 540, which is dated March 3, 1925, and which bears the legend "Pile driver at Pier 7-B-W", be introduced as Respondent's Exhibit No. 99.

Commissioner Riley: So received and noted as Exhibit 99.

Mr. Thelen: We offer that photograph dated March 11, 1925, and marked "Pier 8-A-E" and ask that it be given No. 100.

Commissioner Riley: So received and noted as Exhibit 100.

Mr. Thelen: We ask that that photograph dated March 19, 1925, and marked "Excavating at Pier 7", be introduced and take Respondent's No. 101.

Commissioner Riley: Received and noted as 101.

Mr. Thelen: We ask that photograph No. 558 which is dated April 21, 1925, and marked "Driving sheet piling Pier 8-A-E", be introduced and given Respondent's Exhibit No. 102.

Commissioner Riley: Received and noted as 102.

The Witness: I have selected this picture because it shows the stage of the work at Pier 8 in the interim agreement, the Missouri Valley Bridge & Iron Company having [fol. 598] followed Duncanson & Harrellson on February 1, 1925, but a sub-contractor to the Raymond Concrete Pile Company. It is at this stage that the financing practically was signed and agreed.

Q. As I understand it, these people were not merely to interest themselves in the actual construction work but also to bring bond people into the picture who would finally supply the bond money for the completion of the project; that is the case, is it not?

A. The Raymond Company successfully acted in two capacities, that is, first as a general contractor, and they brought in successfully the two eventual contractors.

Q. And who were they?

A. They were the American Bridge Company, of the U. S. Steel Products Company, for the superstructure, and the Missouri Valley Bridge & Iron Company, of Leavenworth, Kansas, who were to complete the foundations. In the second place, and perhaps more important, they brought the successful bonding people, and in that sense they were part of the financial group.

Q. Do you happen to have the photograph that shows the men who were prominent at that time both in construction and financial work in connection with the bridge?

A. I have a photograph, No. 476, which I purposely took on January 6, 1925.

Mr. Thelen: We ask that that photograph, No. 476, and dated January 6, 1925, and which is marked "Left to right: Messrs. Duncanson, Everham, Upson, Derleth, Dent, Shurtleff, and Hanford", be introduced and marked Respondent's Exhibit 103.

[fol. 599] Commissioner Riley: So received and noted.

Q. Looking to the situation then in the latter part of April, 1925, approximately how much money had been expended by the American Toll Bridge Company up to that time?

A. On engineering and on actual construction they had spent just about \$1,000,000. That \$1,000,000 does not include overheads and cost of lands, legal expenses and all the other expenses incident to getting franchises and permits.

Q. As I understand it, it was only after the expenditure of that \$1,000,000 that the bond money became available?

A. That is certainly true.

Mr. Thelen: Will you now proceed with some further comments on Pier 4 subsequent to April, 1925?

A. It must be apparent from what I have said yesterday and today that in the period from April 2, 1923, when we began explorations and actively proceeded to the McGill contracts and then in about September, 1923, with the Duncanson & Harrellson contracts, that it was my duty as the chief engineer, for obvious reasons, to build economically. So when it came to Pier 4, which is next in order of magnitude to Piers 2 and 3, I decided on the following scheme (indicating on blackboard).

I recall that that riprap which I placed does not seem to be mentioned at all in the Commission's Exhibit 3. It amounted to, in my remembrance—I made a few figures yesterday of the amount I placed—it amounted to about 4500 tons and it was very material there because later when the pier was finished it was to drop down into this soft material and replace the soft material as the currents washed the fine stuff away, and protect the pier.

[fol. 600] Q. Are you satisfied, then, as you look back at the situation now, that the amount spent on that pier was, under the circumstances, a reasonable amount?

A. It was an economical amount.

Q. Mr. Derteth, in view of the fact that there has been some challenge of the amount of money expended by the Company in connection with the temporary fender system, I wonder whether you have available, either some plans or photographs or both, which could visualize that temporary fender system so that the Commission and its experts might see what it actually was?

A. Yes.



Q. Mr. Derleth, you have had affixed to the blackboard two, shall we call them white prints, or what is the technical name?

A. These are white prints of the original tracings which were submitted to the War Department.

Q. May we identify them in some way so that they may be marked as exhibits in this case?

A. Sheet 1 is entitled "American Toll Bridge Company, Fender System at Carquinez Bridge, rock embankment".

Mr. Thelen: I would ask that that white print be introduced as Respondent's Exhibit No. 104.

Commissioner Riley: It will be received and so noted as 104.

Mr. Thelen: And the other one, would you identify that one, please?

A. Sheet 2 of the same series of drawings was submitted to the War Department, dated December 21, 1927. It is entitled "American Toll Bridge Company, Fender System at Carquinez Bridge and rock embankment."

Mr. Thelen: We ask that that print be received and [fol. 601] marked as Exhibit 105.

Commissioner Riley: That will be received as 105.

Q. Then, as I understand it, during the earlier days of the temporary fender construction you had what we may call a barge system, a system of barges, and then during the subsequent period we have a system of ships shown on Exhibit No. 105 with all the construction that is there shown between the four piers of Pier 3?

A. Yes, sir.

Q. Do I understand all of that construction was put in at the orders of the War Department?

A. It was put in by the orders of the War Department, through numerous orders.

Commissioner Riley: When did this permanent fender, or when was the construction begun upon the permanent fender in relation to the completion of the bridge?

A. The bridge was opened to traffic May 21, 1927, and the fender structure was accepted by us from the contractor, Healy-Tibbitts Company, about December 2, 1930. After that the War Department extended our operations to February, 1931, so that we could install all of the lights and fog

signals ordered by them and by the Light House Service of the United States.

Q. As I recall your testimony, the first permit that you had from the War Department called for a fender, did it not?

A. Yes, sir.

Mr. Thelen: May I ask you, Mr. Derleth, following the questions that have been asked by the Commissioner, as to whether or not it would have been possible to have constructed the permanent fender system while the piers were in process of construction?

[fol. 602] A. No, sir, it would have been impossible because a permanent fender system, if built, could only be built after the piers were completed, and they were not completed until later in 1926, and then the fender system would have been in the way of the erection of the steel superstructure. Either you had to build the fender and then have the steel superstructure wait about 2 years, or you could build the steel superstructure first and then build the fender afterwards. And that was the position which the War Department considered rationally, so that we could open the bridge to traffic at an early date.

Q. All right, pardon my interruption. I believe you were about to get a few photographs which show the temporary fender system.

A. Yes, No. 1280.

Mr. Thelen: We ask that photograph No. 1280, dated May 13, 1928, "Temporary center pier fender", be introduced and marked Respondent's Exhibit 106.

Commissioner Riley: It will be so received and marked as Exhibit 106.

The Witness: Photograph 1280 shows four barges on one side, up-stream and down-stream, as ordered by the War Department January 17, 1927.

Mr. Thelen: Have you completed your comments on No. 1280?

A. The picture shows what I have already stated, that the War Department required four barges up-stream and four down-stream, with numerous cables and also cross-cables to act as a sort of barbed wire fence in case small craft came down against the piers.

Q. It also shows the temporary lighting system in connection with each of those barges does it not?

[fol. 603] A. Of course, all barges, whether they are for this purpose or for any other purpose, fixed in the stream during construction had to have lights on them in accordance with the laws of the United States.

Mr. Thelen: We ask that this photograph No. 1322, and bearing the legend "East ships 'Caroline' and 'Bangor', Pier 3 temporary fender system", dated June 15, 1927, be introduced and marked Exhibit 107 of Respondent.

Commissioner Riley: It will be received and noted as 107.

The Witness: The order of the War Department for these ships, dated May 24, 1927, instructed us to place the two up-stream ships first, and this picture shows the early stage of that placing. The next picture, 1326 —

Mr. Thelen: We ask that that photograph which is dated June 24, 1927, and marked "Pier 3, temporary fender system, west ship 'Forester'", be introduced and given Exhibit No. 108.

Commissioner Riley: It will be so noted, Exhibit 108.

Mr. Thelen: We now ask that photograph 1327, dated June 24, 1927, and marked "Pier 3, temporary fender system, west ships", be introduced and marked Exhibit 109.

Commissioner Riley: So received.

The Witness: This shows two west or down-stream ships practically harnessed, with four barges farther down-stream, protecting the ships from the extending anchor chains to the anchors. The next is No. 1338.

Mr. Thelen: We ask that this photograph No. 1338 and dated August 30, 1927, marked "Pier 3, temporary fender system", be introduced and marked Respondent's Exhibit 110.

Commissioner Riley: It will be received and so noted, 110.

[fol. 604] The Witness: In this view we are noting two ships on one side of the pier and the early construction of those frames on the two south piers and the two north piers of Pier 3, with the stub pile system and the diagonal timbers such as you often see in ferry slips. The steel girders have not yet been placed as ordered. The next is 1348.

Mr. Thelen: We ask that the photograph numbered 1348 and dated September 13, 1927, and which is marked "Pier 3 fender system, placement of 30-ton steel struts between piers", be introduced and given Exhibit No. 111.

Commissioner Riley: So received as Exhibit 111.

Mr. Thelen: We ask now that photograph No. 1339, dated August 30, 1927, and marked "Pier 3, temporary fender system, view towards the north", be introduced and marked Respondent's Exhibit 112.

Commissioner Riley: So received and marked 112.

The Witness: This view shows the four ships now in place but not fully corraled and chained. Those barges for the protection of ships against anchor chains have not yet been placed, but you see one of our derrick barges alongside the pier cluster, building those docks that were ordered.

Q. Now, just a closing question or two in connection with the temporary fender. I will ask you whether or not the moneys which the Company expended in connection with the temporary fender were necessarily expended?

A. They were ordered by the War Department. Besides that, we wanted protection.

Q. As far as you know, were the amounts of money expended reasonable, bearing in mind the War Department's orders?

[fol. 605] A. We built and maintained those barges and ships and all accessories just as economically as we could. It was in our own interests to do so.

Q. Do you know of any reason why, in your judgment, an expenditure of that character should not be included in the rate base in a valuation case?

A. It is entirely a part of the cost of construction.

Q. Referring now for a few minutes to the permanent fender, I believe you have already testified that on June 29, 1927, the Company received from the War Department a letter stating the Department's requirements in connection with a permanent fender?

A. A letter of June 24, 1927, which listed the conditions of the permit and required us to prepare drawings and append them to a formal revised application for permit. That we did on July 16, 1927, and the permit was granted and signed September 20, 1927.

Q. The letter to which I referred a moment ago and dated June 29, 1927, is the letter, is it not?

A. Yes, sir.

Q. And I take it that you proceeded with the construction of a permanent fender under the War Department's orders?

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Those orders to which you have just referred by permit required first that, under the supervision of the War Department, we should prepare the exact plans, of which the two exhibits, 104 and 105, were preliminaries. There were other plans which followed which were approved in January, 1928. And based on those plans we proceeded at once to call for bids on the embankment in February, 1928, and we shortly thereafter called for bids on the concrete piling and concrete

And from those dates on the active construction of the embankment for the concrete fender proceeded and was [606] essentially completed in September, 1930, and, all the odds and ends, we accepted the Healy-Tibbitts on December 2, 1930.

After that I take it the ships were removed?

The ships were not removed until the War Department gave us permission, and they issued that permit in December, 1930, and at the same time they sent notice to navigation at what dates the ships were to be removed.

Do you happen to remember the date on which the permanent fender was formally accepted by the War Department?

I have mentioned from memory that they finally accepted the fender with the lighting in February, 1931. I give you the exact date, I think, if you want to take the time.

Was it February 12, 1931?

To the best of my remembrance it was about February

I have that record somewhere.

I think that is sufficient without your taking the time into it further.

And here is my resume of all the orders of the War Department on fenders, which were some 50 in number, beginning in 1926 and earlier, running—February 12, 1931, the War Department accepted the fender complete with lights and navigation signals installed, and the Light House Service joined in the approval.

Have you just a few photographs dealing with work during the progress of the construction of the permanent fender?

Yes, sir.

Which is the first of those photographs?

1361.



Mr. Thelen: We ask that photograph No. 1361, dated November 23, 1928, and marked "Pier 3, fender riprap, m-[fol. 607] loading rock on 20-foot section north of 3-A piers", be introduced and marked as Respondent's Exhibit 113.

Commissioner Riley: It will be received as Exhibit 113.

Mr. Thelen: We ask that No. 1365, dated December 11, 1928, which is marked "Pier 3 fender, riprap, landing rock barge alongside of derrick barge", be introduced and marked Respondent's Exhibit 114.

Commissioner Riley: That will be received as 114.

Mr. Thelen: We ask that No. 1065, dated December 30, 1926, and entitled "3000-pound bronz fog bell for mounting on northeast corner Tower 3, cast by United Brass Foundry Company, S.F.", be introduced and marked Respondent's Exhibit 115.

Commissioner Riley: Received and so noted, Exhibit 115.

The Witness: This bell was secured and specially approved by the Light House Service for the permanent installation of a fog bell on Pier 3 and, as the photograph states, that bell was installed in suitable housing on the northeast corner of the pier group.

Mr. Thelen: Were you able to find any item in Commission's Exhibit No. 3 for the installation of protection against fog?

A. There is no evidence in the Commission Exhibit 3 for allowance for cost of fog bells or lights or anything that pertains to navigation, either on the fender or on floating equipment or construction, or on the floor of the permanent bridge or on the tops of the towers or the light beacons for aviation.

Mr. Thelen: We ask that that photograph dated May 22, 1929, and which has on it the legend "Pier 3, fender test [fol. 608] piles, driving south batter test pile. No. O Vulcan hammer", be received as Respondent's Exhibit 116.

Commissioner Riley: It will be received as Exhibit 116.

Mr. Thelen: Now, have you before you a copy of Railroad Commission's Exhibit No. 3?

A. Yes, sir.

Q. Will you please turn to Plate No. 2 on page 14. I will ask you whether or not that progress schedule shows the entire period during which work was being done, either preliminary to or in the actual construction of the bridge?

Plate No. 2 of Commission's Exhibit No. 3, page 14, states no activities on the part of the Company building the bridge previous to April 2, 1923. I have already testified that we had costly and very active work beginning in November, 1922, on all fronts, preparing for franchise and making surveys in the Strait and on the adjacent parties, beginning to decide what properties we needed in addition to those we owned, the making of current measurements and so on—all a very necessary preliminary to April 2, 1923, when we authorized Duncanson & Harrell to begin the diamond drill borings.

State, please, whether or not that progress schedule of work done by the Toll Bridge Company itself as distinguished from work done by its contractors or subcontractors?

The diagram seems to be entirely silent on those activities which were under the immediate direction of the engineer himself and his assistants, under the resident engineer, for many different things that had to be done, which cost money and which were a necessary part of the program of construction.

Q. On page 15 we find this statement, "In estimating the cost of caissons a study has been made of the detailed costs of caissons for the San Francisco-Oakland Bridge and the Martinez-Benecia Bridge". Have you any comment to make on that statement?

A. Well, such a study would be illuminating to anybody, but the conditions in 1923 to 1927 were entirely different. As I have repeatedly and tersely stated, we were a pioneer. Long span bridges were built after the Carquinez Bridge in different parts of the United States, new equipment was devised, power machinery became improved. I mentioned this morning that new types of long steel interlocking sheet piling were available, and so on and so forth. Therefore, would be the cost of construction, or whether you could build something in 1924 as you would build it in 1934 is entirely an academic question. Prices, of course, changed, everybody knows that conditions were different in the middle 20's than the early part of the 30's. As conditions changed, new schemes of social arrangements made new costs in work where labor is involved.

Will you please turn to Table No. 2 of the Commission's Exhibit 3, beginning on page 17? Now, before asking a few questions dealing with the individual piers, I

would like to ask you a more general question as to whether or not, in your judgment, the items shown in that table are sufficiently inclusive to cover the actual items in connection with the construction of the bridge?

A. They certainly are not. They represent a sort of brief preliminary view of what might be the cost of a bridge when you are not yet aware of all the hazards and [fol. 610] all the difficulties that you will encounter.

Q. You might, if you will, mention some of the more important items which apparently are omitted?

A. In order to be brief and also reasonably inclusive, I have made a careful analysis of the pages of Table No. 2 of Commission's Exhibit No. 3 and I think I might practically quote from one page of my notes: I say, "I have already indirectly commented on estimates and particularly with reference to Piers 2, 3-A, 3-B and 4, and I have attempted to give reasons why estimates are low for these major piers if you omit important items such, for example, as the temporary fenders or amounts of riprap placed in these embankments. You must consider in unusual work the costs of anchorage systems, of temporary floating fenders, of launch ways, tugs and barges needed, derricks, the contributing cost to all of the foundation piers of the accessory buildings that were needed for tools or for engineers or for hospital or sleeping quarters; the construction wharves, the approach trestles over the Southern Pacific tracks, the changes in such trestles when the Southern Pacific Railroad changed its alignment and we were obliged to agree to such changes at our cost when we received an easement in August of 1924." The cost of all such items is material. And in these pioneer days and for, say, smaller structures than the Bay Bridge, the overhead charges may become a very high percentage and unless you consider them specially and in the light of their own case you may either over-rate or under-rate them. In this case I think they were usually under-rated, and very largely because some of these items were not apparent to the engineer who prepared these estimates in the Commission's [fol. 611] Exhibit 3. Then there are throughout the estimate for all the piers and the foundation work—there seems to be an under-rating or an entire omission of the costs for material and labor for false work. I have referred to the necessary false work around Pier 4 to reach Piers 6, 7 and 8, or Pier 5 in the water; and apparently such overhead charges

compensation insurance, contractor's profit, surety bond the removing later of false work structures, cleaning site, various contingencies and hazards which should be considered, the submarine cables and the power lines, installation of power and pumps and fuel, all of which reflected in costs; also the general insurance on the contractor's plant and, certainly, a reasonable amount of profit to which he is entitled. All such items are either forgotten or forgotten or misunderstood, or it is claimed they are included in unit prices which cover all of these uncertainties. Would that be a normal way for an engineer to handle work of that character, to put them, say, in a unit price for excavation or unit price for reinforcing steel or something of that sort?

For an unprecedented pioneering structure of great magnitude, in a position of hazard, the only way to make an estimate is to consider every important part in its construction and then add those costs. Considering each item separately you can then for that particular item consider a particular unit price and you will get that way, if you are competent and experienced both as an engineer and contractor, you will perhaps get a reasonable price for the total work. But even then, experienced as you are, contractors often under-bid and sometimes they bid so high they never get the work. But the only way, particularly in a case like this, is not to make an item bid paper bid based on comparisons but to consider each item and then, with the best knowledge at your command, assign prices to each item.

Well, without going into further details as to Pier 1, it is from what you have stated there must have been important omissions to have resulted in an estimate as low as \$100 for the construction of that pier?

Oh, that cost is entirely too low. I want to make one more remark, and with all respectful attention to my remarks: When you have to bring equipment into an inaccessible place and all you excavate is only, say, 1100 cubic yards, the overhead of that equipment is associated to 1100 yards. You have to bring the equipment in and you have to take it out again. If this pier had had a million yards in it that overhead becomes a very modest percentage. It is for such reasons that I stated in a general manner earlier that it is extremely dangerous to say that in unit prices you are putting overhead. I notice that



frequently, whether the pier is a \$10,000 pier or whether it is \$110,000 or \$1,000,000, the same unit prices are frequently used for the same object or similar objects.

Q. This Pier No. 1, I believe you have already testified was located over on the Solano County shore in a more or less inaccessible place?

A. Decidedly inaccessible at that time.

Q. If you will kindly return to Table No. 2 on page 13, do you have any comments to make with reference to Piers [fol. 613] 2, 3-A and 3-B? The page should be 17, I see.

A. Well, there again in that estimate there are, as I see them, four items and four unit prices; but I see no evidence there of the inclusion in those items, or properly included in those items, the cost of pumping, the pumping equipment on the floating barge, the jet systems, the piping for the jet systems, the operation, cost of operating water jets, the cutting edges, the preservative paint on exposed timbers outside and on the inside of the dredging wells, the large cost of the anchorage systems and their maintenance, which were in several stages, as I have testified; first barges, then ships, then chips moved; no item for divers, and so forth. Of course, I am aware it has been here testified by Mr. Mitchell that he thinks those are all included in the unit prices. I know his estimate for Piers 2 and 3 is much lower than what we paid out and, as a matter of fact, I know we felt at the time we were building the piers very economically.

Q. Turning now to Pier 4 on page 18, have you any comments to make on the cofferdam items or other items which are shown in connection with that pier?

A. Well, if you look on page 18 you will see the items listed. The author, Mr. Mitchell, assumes he would start and drive some sheet piles and then put a reasonable amount of what he calls "waling" and proceed at the unit prices indicated here. But I have attempted to show yesterday and today, particularly this morning, that that pier is in an unusual position and we either have to use a cofferdam and very soft ground, or you have to go to a much more expensive type, the dredging type. I decided to use the cofferdam box heavily braced, much more heavily than Mr. [fol. 614] Mitchell seems to consider necessary, and I surrounded it with sheet piling. He says nothing in his estimate regarding the necessity, either then or in future, for riprap embankment around that pier, the scour wash



of the soft materials, as they naturally would—and you must remember there was no pier head line here at the time we asked the War Department to establish it. And there is nothing in this estimate, except if it occurs in over-heads of his unit prices, which I doubt very decidedly, for such things as the construction platforms, particularly those that I repeated pointed out in the photographs on the north side, the dolphins. And I have attempted to show, particularly this morning, that whatever you use, whether you use my cofferdam box or whether you use sheet piling specially designed from a different angle, and more hindsight, and framing inside of that, that framing had to be built also for the purpose of carrying the heavy pile drivers and these heavy concrete piles. So, summing up—and I am in a way repeating what I have said for piers 1, 2 and 3—there are many things omitted—rip-rap, pile dolphins, construction platforms and bracing, divers, cleaning of the bottom, the digging of the bottom deeper than he assumes—you have to allow for swelling of the ground in driving piles—and the rock ballast at the bottom of the pier, which he has not included, and so on and so forth. At any rate, he gets a price, according to his methods, of \$237,230 for that pier. And I certainly was trying my best to build an economical pier, and I spent \$428,910.

Q. This is a small item, but what would you say as to an expense of \$400 for unwatering and pumping?

[fol. 615] A. Well, there must be some error there. That figure—well, to be frank, that figure is ridiculously small. We had two 10-inch pumps and one 8-inch pump in the cofferdam.

Q. During what period of time were those pumps operated?

A. Two or three months.

Q. You had to run the pumps for that length of time?

A. Yes.

Q. And did you rent the pumps or did you buy them?

A. Well, at first they started to rent pumps but I think we finally, on the rental agreement, found it would be cheaper to buy them.

Q. Those pumps required fuel oil to operate them?

A. One was a gasoline pump and the other two were operated by motors.

Q. How about wages in connection with the operation of the pumps? How many hours a day did the men watch the pumps and operate them?

A. During the work on the lower reaches of the foundations, say around minus 40, we had pumps operating all day long, three shifts.

Q. Three shifts of 8 hours?

A. Yes.

Q. Then it is your judgment, I take it, that there must be some very serious mistake in connection with that estimate?

A. Well, the \$400 item, there is something wrong about it.

Q. Now, shall we hurry on to Pier 5 on page 18? Have you any comments on that pier?

A. Well, Pier 5, again, is to be similarly discussed. I have pointed out that that pier was out in open water at the time it was built. The photographs show it. We had to build pile trestles, we had to build a cofferdam, we had to excavate as is here indicated, 400 cubic yards—I have for [fol. 616] gotten at this writing how many yards we did excavate but it can be found in our records. We built the sheet pile cofferdam and we put in rock ballast under the concrete, we put construction wharves here, we changed the Valona sewer outlet after it passed through a culvert of the new main line track connection of the Southern Pacific, and so on and so forth. Again I will repeat that the other things like compensation insurance, bonding and a host of items which are all claimed to be in these unit prices, and then there are a lot of items omitted.

Q. Are you able, for instance, to find any reference here to the cofferdam?

A. No, none whatever.

Q. Construction of the pile platforms?

A. None.

Q. Moving the Valona main outlet sewer?

A. No.

Q. Demolishing the old Six Minute Ferry Company's auto trestle which ran over the site?

A. No, sir.

Q. Do you have any comments on Piers 6, 7 and 8 referred to on page 19 of that Exhibit 3?

A. I have repeatedly in my testimony referred to this area as a swamp. The figures show it clearly. Yet this estimate, which is very low, about half what it ought to be,

apparently assumes these piers were built on dry land, that we just dug out a little area and we built these pedestals, four in number, for each of the piers, 12 pedestals, built them right on dry land. Now, I have shown, and I am repeating what I have said, that we had to build extensive trestles and platforms, had to carry all the equipment out there on these trestles, we had to drive the piles, we had to pump, had to build cofferdams, and so on and so forth. And none of these items that I am more or less emphasizing appear in the estimate.

Q. Assuming just for the sake of the argument that it were [fol. 617] intended to throw the 12 cofferdams into the price of concrete at \$14 per cubic yard, and assuming those 12 cofferdams cost between \$10,000 and \$15,000, what would you say with reference to the adequacy of the \$14 per cubic yard of concrete to take care of the cofferdams in addition to all the items which normally would get into the cost of concrete?

A. You have answered that question yourself; there would be nothing left for concrete and nothing for workmen's compensation and for contractor's profit and the host of other items I have been repeating over and over again.

Q. May I ask you—and this is a personal question—as to whether you, in any of your estimates throughout the long practice of your profession, have been accustomed to throw cofferdams into the price of concrete?

A. No, I do not, because sites vary, conditions vary and times vary and what is a cofferdam at one place is a very different cofferdam at another place. I have already implied over and over again that it is one thing to build an enclosure for 10,000 yards and another to build an enclosure for ten times that amount on one-tenth of that amount; and you are in a dangerous position when you try to put a percentage into unit prices for those extremely varying conditions.

Q. Would you kindly look at the foot note at the bottom of page 19 of that exhibit. I find there a statement that "Considerable work was done on force account without definite plans".

A. Mr. Mitchell must have been misinformed about that. I certainly have indicated that our plans never strictly deviated from the permanent plans as early as April 17, 1923, and our contract plans were signed by Steinman and myself in November and December, 1923.

[fol. 618] Q. A little higher on the page I find, Mr. Derleth, an allowance of 5 per cent for extra work and change

in plans. Would you kindly state from your experience whether an allowance of 5 per cent is adequate for those items?

A. In the first place, such an item ought to include other things besides extra work and changes in plans, which are contained in contingencies and contractor's profit and elements of hazard which are contingencies, and so forth and so on. 10 per cent is very modest and 15 per cent would be much safer, and then it must be based on a real total cost and a real pier and not upon a paper estimate.

Q. Now, I will ask you if you will be good enough, Mr. Derleth, to turn to page 21 of the report. On page 21 under the head of "Miscellaneous construction work" you will find the elimination of an item of \$11,460 expended by the Company for the Miller and McKinney houses and for comfort station and Inn; have you any comment with reference to those items?

A. Well, they are phenomenally modest, very economical, include not merely the houses but they include the whole arrangement on our toll plaza, its drainage, sewer system, and so forth.

Q. Have you any recollection, Mr. Derleth, of the amounts that were expended for toll plaza by the San Francisco-Oakland Bay Bridge or the Golden Gate Bridge?

A. Yes. I was officially connected with those enterprises. Those are very monumental structures. The other night I looked for the early figures. The toll plaza of the Golden Gate Bridge, with all of its appurtenances, structural appurtenances, exceeded \$578,000, and for the Bay Bridge the costs exceeded \$360,857.

[fol. 619] Q. Would you be sympathetic, then, as to eliminating a small item of \$11,000 as to the Carquinez Bridge, which covers not merely the toll plaza there but also the Miller and McKinney houses?

A. I think it would be very unjust.

Q. I am going to ask you a few questions on the subject of the cost of the permanent fender. If you will kindly handle that matter in your own way, bearing in mind we are interested, first, in the actual quantity of the riprap and, secondly, in what would be the reasonable price to pay for it. Will you kindly develop it in your own way?

A. Well, I notice that Mr. Mitchell, author of the estimates in Commission's Exhibit 3, states he saw somewhere in the directors' reports at one time that they had accumulated



150,000 tons of riprap in the embankment. My records would show that we placed 163,000 tons, and that is in excess of the 47,474 tons of riprap placed at Pier 3 on the War Department's order of July 1, 1926, to fill up the scour places. That is the amount of riprap we scraped down through pipes, 163,000 tons—that is, at that time when the fender was built.

The best price that you could get normally in San Francisco at that time in 1928 from any responsible quarry was \$1 a ton at the quarry and 20 cents to tow it to the site. That made \$1.20 per ton. To this I am willing to accept the 45 cents for placing that Mr. Mitchell used, which makes \$1.65 per ton in place for the riprap of the embankment, provided he will also include the costs of our equipment which we used for the placing. Now, if you will multiply 163,000 tons by \$1.65 you get a total cost for the riprap in [fol. 620] place of \$268,950, plus the use of our equipment which you saw in the photograph.

Mr. Thelen: Now, Mr. Derleth, you have been on the stand a long time and you must be quite tired. I am going to ask you only as to one other item. You have noted in the recapitulation on page 27 that the Commission's estimate cuts the item for engineering expense from \$390,076 to \$304,320. I will ask you whether, in your judgment, that is a reasonable cut?

A. I think it is very unjust; and, of course, I mean by that that the person who assigns that reduction is misinformed. I know what engineering costs are on structures for the last 40 years, and we were very economical and, may I say, efficient. We had no money to waste in the engineering department and that item includes all of our endeavors from September, 1922, on. And when it is all said and done I think you will find that the total figure is 6 per cent of our construction costs. 6 per cent of our bridge construction costs is very modest, if I have made any impression here as to the problems we faced and the problems we successfully met.

#### Cross-examination:

Mr. Rowell: I have just a few question for information and I presume Mr. Derleth will be available at some future time if, after consultation with the engineers, further cross-examination is desired.

Mr. Thelen: Oh, there is no question about that, certainly.



Mr. Rowell: First of all, in respect to the arrangement made with the Raymond Concrete Pile Company, was that [fol. 621] evidenced by written contract in the first instance?

A. You mean in January, 1925?

Q. When you first began negotiations, or some time soon after, with the Raymond Concrete Pile Company and they undertook to come in and do some work.

A. I can say definitely that there was a written agreement as to the interim work which was to be done.

Q. That was on a cost plus basis, was it?

A. It was on a cost plus, as I remember.

Q. I understood you to say earlier in your testimony today that they were to continue without delay to do the work that was presently being pressed forward by Duncanson & Harrellson?

A. Yes, sir. The Raymond Company was to continue until the whole bridge was completed, and they were to continue in the capacity of a general contractor with two major sub-contractors, one for superstructure steel, the American Bridge Company, and the other, the Missouri Valley Bridge & Iron Company, for sub-structure. And perhaps I am saying more than you expected—in January the intent, I think, was—in fact, I am sure of it—that whatever work was done between February 1, 1925, and the day in April, 1925, when the financing would be completed, would be reflected in the bids for guaranteed completion. But, you see, on April 10, 1925, the Raymond Company went out of the picture.

Q. You say that that work would be reflected in the bids; was it not contemplated that there would be one bid, that of the Raymond Company?

A. That is true; in January; but, you see, the Raymond Company passed out of the picture on, I think, April 10, [fol. 622] 1925, so all the work that was done by the Raymond people and their two sub-contractors between December, 1924, and April 10, 1925, is that \$110,000, part of which was a claim as I have tried to explain this morning. That money was paid to the respective parties, the Missouri Valley people getting nearly \$60,000, and then the contracts for completion of the Missouri Valley and the American Bridge are the contracts which are recorded and which Mr. Mitchell lists in Exhibit 3.

Q. After the Raymond Company stepped out of the picture then you negotiated directly?

A. We readjusted and revised the contracts and the costs, lump sum costs, that were to be guaranteed. I was present at all of those negotiations.

Q. You spoke of the settlement of a claim presented by the Raymond Concrete Pile Company?

A. Yes, sir.

Q. Now, didn't they actually bring suit against the Toll Bridge Company?

A. The Raymond Company after April 10th, when they said they were ready to go on but did not want to take any risks of penalty if extensions of time were not granted, that any such penalty should be borne by the American Toll Bridge Company—I think I said this morning that the two sub-contractors were willing to take that risk. What it amounted to was this, there was no doubt that an extension of time would be willingly granted by the Contra Costa Supervisors, but the lawyers said, "You must get corroboration from the State Legislature". That is as I remember it. And the Raymond people said, "We won't have anything to do with it". And Mr. Aven Hanford, the [fol. 623] president of the Bridge Company, and Maxwell Upson, president of the Raymond Company, I think, got a little tiffed on the subject. But the Raymond people said, "We are willing to go through with this problem; we were not to guarantee extensions of time, that is not our business; and had we gone on with this work we would have made a certain amount of profit. We have furnished you with successful sub-contractors, we have furnished you with successful bonding houses, we have arranged with you through our engineering services between December, 1924, and April, 1925, to get all of these arrangements, technical and otherwise, settled; therefore, we have been your engineers and we have been your financial agents and we are entitled to a certain portion of that profit in addition to the payment for our actual expenses. And if you don't pay we will sue you." Hanford apparently finally said, "Well, for your services we will give you \$50,000, plus \$1200 for certain office expenses, and the rest of the \$110,000 you must agree to pay to the Missouri Valley Bridge & Iron Company, who have shown us that that balance of something like \$60,000 is due them for the actual work that they did on Piers 3, 6, 7 and 8," as I have already described and, of course, on other things, on the docks and so on.

Q. Will you kindly refer, Doctor, to page 13 of Exhibit 3 which lists all of the contract payments, presumably?

Q. I want to ask you as to these figures on page 13, whether or not all of them down to the contract of May 11, 1925, as listed in the lefthand column, with the United States Steel Products Company, could not all be assigned to the [fol. 624] sub-structure of the piers?

A. A considerable quantity, yes. Let me take the number in order. Of course, the Thomas C. McGill is not foundations, most of that was that railway cut, I will call it, and roadway north of Pier 1. Then the next item was excavation, the rough excavation at Pier 1. That would be included in foundations. Later on Duncanson & Harrellson completed Pier 1. Those costs apparently are in the next item, \$655,580, and that item includes all the work—what Duncanson & Harrellson did on Pier 4, it includes what they did on Piers 2 and 3 and on Pier 5 and what he did for the trestles in the railroad swamp, what pile driving and other work he did at Pier 6. It includes all the work at Piers 9, 10, 11 and 12 which were completed with the exception of the work on Pier 12 that—

Q. As illustrated by nearly all the photographs introduced?

A. Yes. And, of course, it includes also the work Duncanson & Harrellson did in either demolishing trestles at Pier 5; in building new trestles, as I have illustrated and explained by the photographs, and then there is all that construction wharf that I explained.

Q. May I interrupt you there? Does this represent all that was paid to Duncanson & Harrellson?

A. Well, so far as I know, yes. I don't know.

Q. Now, looking at your progress photographs that you have introduced in evidence, all of your wharves, preliminary structures and your cofferdams, was anyone, other than Duncanson & Harrellson, interested in that construction and paid any sum of money?

A. I can't answer that question; I don't know.

[fol. 625] Q. You spoke several times this morning as "we". I take that to be the Company itself engaging in some construction work. Now, I wish you would explain that for me.

Q. Well, what I meant by that, of course, comes solely from myself. I know that throughout emergency conditions

after the Duncanson & Harrellson Company went out of the picture physically on February 1, 1925, Mr. Calder and I were the engineers in charge of those operations, and if we needed to do something that was not in the Missouri Valley contract or in the American Bridge Company's contract—and there were many such things—why we did them, and those were charged to the American Toll Bridge Company. That is what I meant by “we”. For example, even after the bridge was open to traffic, I have explained Healy and Daniels furnished rock at a certain price for the embankment. We, the American Toll Bridge Company, furnished equipment and an engineering force and even laborers to assist in the placing of that rock. The American Toll Bridge Company placed those temporary fenders, those eight barges and then the ships. Now, that kind of bookkeeping they finally used after I gave them the costs I don't know.

Q. Well, I would like to confine the discussion to the period up to about the first of 1925 when Duncanson & Harrellson ceased operation.

A. Yes.

Q. Now, do you know whether or not all of the labor, or practically all the labor and material was furnished by Duncanson & Harrellson?

A. Essentially all, yes, as far as I know, except the labor of the engineers.

[fol. 626] BEN C. GERWICK, a witness called on behalf of the American Toll Bridge Company, being first duly sworn, testified as follows:

Direct examination:

Mr. Thelen: Where do you live, Mr. Gerwick?

A. I live in Berkeley.

Q. And what is your business or occupation at the present time?

A. I am president of Ben C. Gerwick, Inc., and also chief engineer of the American Toll Bridge Company.

Q. Where is the office of Ben C. Gerwick, Inc.?

A. 112 Market Street, San Francisco.

Q. In what business is the Ben C. Gerwick, Inc., engaged?

A. Engaged in the general contracting business.

Q. Does the Company specialize in any particular type of contract work?



A. Yes, it specializes in wharves, piers, cofferdams, caissons and in under-water construction, heavy construction.

Q. How long has the Company been engaged in that type of work?

A. Since February, 1926.

Q. You have been the president of the Company throughout all of that time?

A. I have.

Q. You referred to being chief engineer of the American Toll Bridge Company. How long have you served the Company in that capacity?

A. Since February, 1936.

Q. Now, Mr. Gerwick, I will be very much obliged to you if you will tell us something about your education, training and experience. You might begin with your education. I imagine you are a graduate of some college or institution, are you?

A. I am a graduate of Ohio State University.

Q. Suppose you pick up your story from there and tell us what your training and experience has been subsequent to [fol. 627] that time? You graduated in 1906, did you not?

A. I graduated from Ohio State University in 1906 and I have the degree of civil engineer from Ohio State University. I have been an associate or corporate member of the American Society of Civil Engineers since 1912. I am a licensed civil engineer of the State of California, No. 478. I previously testified that I am present of Ben C. Gerwick, Inc., and that my company specializes on construction of wharves, piers, bridge foundations, caissons, cofferdams and deep water foundations. I am the inventor and owner of U. S. Letters Patent No. 1624330 for the construction of deep water cofferdams and open caissons. The patent has been used in constructing two major piers in San Francisco Bay.

Q. Now, we would be very much interested if you would tell us something of the projects with which you have been connected as engineer or contractor or in any other capacity.

A. Well, from 1906 until the present time, the period of 31 years, I have been continuously engaged in the construction of wharves, piers, approach foundations and cofferdams, as resident engineer, superintendent of construction, contractor's engineer or contractor.



Q. Well, would it be convenient to take up the matter more or less in chronological order as far as the different jobs with which you have been connected are concerned?

A. Yes. I was, starting in 1906, resident engineer on several bridges of the Western Pacific Railway Company in the Feather River Canyon, the Willow Creek viaduct, bridge A, B, C, D, E and F. Later in that period I designed three bridges in Ohio, one known as the Dresden Suspension [fol. 628] Bridge and one known as the Roseville Arch Bridge. I was resident engineer in California on the Black Point cut-off bridge, the Yolo Causeway—I think those two. From that I was the contractor's engineer on the King City Bridge, Oroville Bridge—those are the two. I was general contractor on the San Ardo Bridge, the Moss Landing Bridge and the Montezuma draw-bridge. I was resident engineer on the railroad bridge for the O. R. & N. Railroad at Bonneville, Oregon. I was contractor's engineer, chief engineer, for the under-pinning of the masonry piers of the draw-bridge across the Sacramento River at Colusa, without putting the draw span out of operation. As general contractor I replaced the center pier and shifted the Montezuma draw-bridge horizontally 30 feet without interrupting traffic.

Q. Where was that?

A. Across Montezuma Slough in Solano County. As superintending engineer or contractor I have built a great many piers and wharves on San Francisco Bay.

Q. That work, I imagine, came a little later?

A. Came later, yes.

Q. You first testified to your earlier work which was largely bridge construction?

A. That is right.

Q. Now, with the advance of years you became interested in the construction of piers and wharves on San Francisco Bay, did you?

A. Yes.

Q. Will you kindly give some of the jobs of that type with which you have been connected on San Francisco Bay?

A. I could presumably name a great many but I would like to say the Standard Oil Company at Richmond, Union Oil [fol. 629] Company—

Q. May I ask in connection with each of these that you kindly specify how you were connected, that is, in what capacity you were connected with the job?

A. With the Standard Oil Company at Richmond I was chief engineer for the contractor—you might call it superintending engineer. The Union Oil Company at Oleum, chief engineer for the contractor and also later general contractor. For the Port of Oakland, a general contractor. For the Parr Terminal Company, Oakland, general contractor. For the Port of San Francisco, Board of State Harbor Commissioners, San Francisco, I was the contractor's engineer on a great many structures and I also have been a general contractor. On some of the wharves for the Union Iron Works at Alameda and at San Francisco I was both contractor's engineer and on later structures I have been the general contractor. And for the United States Government, San Francisco Bay, I have been the contractor's engineer on quite a few of the wharves and I have been general contractor on quite a few. At Los Angeles Harbor I built the light house wharf on Terminal Island, general contractor. I also built ferry slips and aprons for the Santa Fe and the Sacramento Northern Railway Company.

Q. Have you had any experience in the construction of cofferdams?

A. Yes, I have.

Q. Please state what that has been.

A. As a general contractor I designed and built three deep cofferdams for the foundation of the Third Street bridge in San Francisco. I designed and acted as consulting construction engineer for another contractor on the two large cofferdams for the Park Street Bridge across the Oakland [fol. 630] estuary. Those were the two cofferdams mentioned by Dean Derleth and were probably as large as any ever built, with that head of water, without a seal. I designed and was superintendent of construction on 36 cofferdams in Dumbarton Strait for the piers of the Hetch Hetchy pipe line crossing.

Q. About what year was that?

A. That was during 1924 and 1925.

Q. That was during the period during which the Carquinez Bridge was under construction, part of that period?

A. Yes, that is true.

Q. Did you do other work in connection with the Dumbarton Strait?

A. I designed and superintended construction of the large caisson in the center of the Dumbarton Strait where the Hetch Hetchy pipe lines go under the channel in the Dum-

ton Strait, and I think it was probably the largest open cofferdam ever attempted up to that time.

Do you remember what the size of it was?

It was, as I recall it, circular, 84 feet in diameter, and unwatered to a head of about 60 feet. The outside shell of cylinders, went to a depth of 84 feet below low water.

When was that work done?

That work was done in 1924 and 1925 and I think it was either completed in the late Fall of 1925 or perhaps early, 1926.

In what capacity were you connected with that work?

I designed the cofferdam and superintended the actual construction of it. I designed and superintended the construction of ten cofferdams, or they are an open crib, as we call them, for the piers of the Dumbarton Highway bridge across the Dumbarton Straits.

[631] Q. When was that work done?

The major part of that was done in 1925 and possibly the rest of it in late 1924. I superintended the construction of the sinking of 40 concrete caissons at the China Basin wharf in San Francisco.

What sort of work was that?

They were concrete caissons for the sea wall which runs from Third Street Bridge to Pier 46. These caissons, about 50 feet long, were made on land on launching ways and launched, towed into the site, up-ended and sunk. Of course, they were too heavy to lift and we moved them and sank them by the use of water, controlled by valves. I designed and was superintendent of construction on the cofferdam for the pumping plant of the California Water Service Company at Pittsburg. I was construction consultant for the contractor on the Golden Gate Bridge anchorages, the south anchorage going 45 feet below sea level, in low low water, or 60 feet below the top of the sea at Fort Point. Of course, it was exposed to the open air and quite a problem. I have been superintendent of construction on many ship ways and marine railways at various ship yards on San Francisco Bay and have sunk many deep steel cylinders on various projects.

Have you done any work since 1935, either as contractor or engineer, work of the type to which you have been referring?

A. I have been engaged in such work all the time. At the present time I am completing, or my firm is, completing Pier 19 for the Board of Harbor Commissioners of San Francisco.

[fol. 632] Q. Now, have you at my request prepared a portion of an estimate of the cost, of the reasonable historic cost, of the Carquinez Bridge?

A. Yes, I have.

Q. I understand that you prepared the larger portion of that estimate and that Mr. Ready then completed the estimate in certain respects; is that correct?

A. That is correct.

Mr. Thelen: If your Honor please, I would like to offer in evidence an exhibit entitled "Reasonable historical cost, Carquinez Bridge, American Toll Bridge Company," and ask that it take the next exhibit number.

Commissioner Riley: 117. So received and noted.

(Here follows Exhibit No. 117—pages 26, 27, 29, 30.)

[fol. 633]

COMPANY EXHIBIT No. 117

Witness- Gerwick and Ready

Reasonable Historical Cost, Carquinez Bridge, American Toll Bridge Company

Cases Nos. 4244 & 4259

San Francisco, December —, 1937.

[fol. 634]

Carquinez Bridge

Recapitulation of Construction Cost

		Reasonable Historical Cost
(1) Piers and Foundations:		
a. Exploration of foundations.....		\$43,286.00
b. Pier No. 1.....	\$12,643.00	
c. Piers Nos. 2, 3-A & 3-B.....	1,626,838.26	
d. Pier No. 4.....	422,325.90	
e. Pier No. 5.....	35,729.00	
f. Piers Nos. 6, 7 & 8.....	55,142.00	
g. Piers Nos. 9, 10 & 11.....	4,481.00	
h. Pier No. 12.....	3,707.00	
i. Construction wharf, addition to wharf or trestles.....	84,390.00	
j. Overhead.....	113,328.00	
k. Total (b to j, incl.).....		2,358,584.16
l. Riprap, Piers Nos. 2 & 3.....		39,362.00
Total (a to l, incl.).....		2,441,232.16



## COMPANY EXHIBIT No. 117—Continued

## Carquines Bridge—Recapitulation of Construction Cost—Continued

	Reasonable Historical Cost
(2) Superstructure.....	2,822,499.00
(3) Existing Fender System and Miscellaneous.....	625,103.00
(4) General and Miscellaneous:	
a. Approach work and contributions.....	35,322.00
b. Toll house building.....	17,093.00
c. Other buildings.....	11,461.00
d. Special equipment for toll house, bridge, etc.....	24,307.00
(5) Lands.....	66,835.00
(6) Furniture and Fixtures.....	19,668.00
(7) Total of Items (1) to (6), Inclusive.....	6,063,520.16
(8) Engineering and Inspection (actual).....	365,644.68
(9) General Overhead Expenses..... 5%	303,176.00
(10) Preliminary Expenses—Organization..... 3.5%	212,223.00
Stock Selling.....	148,824.00
(11) Total of Items (1) to (10), Inclusive.....	7,093,387.84
(12) Interest During Construction..... 14.745%	1,045,920.00
(13) Grand Total.....	\$8,139,307.84

fol. 635]

	Original Cost as of 8-31-27		Reasonable
	Recorded Amt.	Adjusted Amt.	Histor. Cost
(1) Piers and Foundations (Total).....	\$2,305,079.04	\$2,305,079.04	\$2,441,232.16
(2) Superstructure.....	2,822,498.87	2,822,498.87	2,822,499.00
(3) Existing Fender System & Miscell.....	625,102.79	625,102.79	625,108.00
(4) General and Miscellaneous:			
a. Approach Work and Contributions.....	35,322.30	35,322.30	35,322.00
b. Toll house building.....	17,092.77	17,092.77	17,093.00
c. Other buildings.....	11,460.76	11,460.76	11,461.00
d. Special equipment for toll house, bridge, etc.....	24,306.93	24,306.93	24,307.00
(5) Lands.....	66,834.62	66,834.62	66,835.00
(6) Furniture and Fixtures.....	19,668.23	19,668.23	19,668.00
(7) Total of Items (1) to (6), Incl.....	5,927,366.31	5,927,366.31	6,063,520.16
(8) Engineering and Inspection (actual).....	365,644.68	365,644.68	365,644.68
(9) General Overhead Expenses.....	492,142.77	492,142.77	303,176.00
(10) Preliminary Expense—			
Organization.....	327,883.91	327,883.91	212,223.00
Stock Selling.....	148,823.79	148,823.79	148,824.00
(11) Total of Items (1) to (10), Incl.....	7,261,861.46	7,261,861.46	7,093,387.84
(12) Interest During Con- struction.....	688,092.56	1,070,761.00	1,045,920.00
(13) Grand Total.....	\$7,949,954.02	\$8,332,622.46	\$8,139,307.84



## COMPANY EXHIBIT No. 117—Continued

[fol. 636]

## Carquines Bridge

Property as of August 31, 1937

## Furniture &amp; Equipment:

As per Mr. Mitchell's Exh. 16, page 10—

80.762% of \$24,353.32..... \$19,068.71

## Lands &amp; Right of Way (Reported Actual Investment)

(Parcel Numbers as per Carquines Bridge Drawing C-23)

Fee Lands.....		\$53,753.17
Parcel V	Bet. Piers 4 and 5.....	\$2,500.00
" VII	Antonio Scalco.....	1,850.00
" VIII	Crockett Land & Cattle.....	9,836.17
" X	Miller House.....	15,717.00
Parcel I	Clyne Tract (55A).....	15,000.00
" XV	Great Western Power Co.....	8,000.00
" XVI	Dos Rios (For Vallejo Road).....	750.00
Right of Way.....		12,050.00
Parcel XI	Reversionary Interest, Civiletti Tract.....	4,250.00
" XVII	Dos Rios.....	8,700.00
Miscellaneous.....		131.45
Abstract of Titles, Contra Costa County.....		76.45
" " Solano County.....		55.00
Total Bridge Lands & Rights of Way.....		\$66,834.62
Tidelands:		
Solano County.....		7,623.59
Total, Including Tidelands.....		\$74,458.21

[fol. 637]

## Analysis of Cost of Carquines Bridge

Total as of August 31, 1937

## Contract Items:

Thos. C. McGill—Approach to Pier No. 1.....	\$10,201.60
" " —Excavation Pier No. 1.....	1,094.32
Duncan & Harrellson.....	763,908.14
Exploration & Pier Foundations.....	\$655,590.36
Concrete Floor.....	108,327.78
Raymond Concrete Pile Co.—Pier Foundations.....	110,623.52
Blake Bros.—Aggregate.....	47,719.28
Daniels Contracting Co.—Aggregate.....	33,539.49
Missouri Valley Bridge & Iron Co.—Pier Foundations.....	1,417,660.15
U. S. Steel Products Co.—Steel Superstructure.....	2,686,854.47
Healy-Tibbitts Co.—Riprap.....	39,361.92
E. L. Soule Co.—Reinforcing Steel.....	27,316.62
5,137,779.51	

## Other Construction Work &amp; Equipment:

Approach.....	25,120.70
Buildings.....	28,553.53
Toll House.....	17,092.77
Other (Incl. Work on "Miller" & "McKinney" Houses).....	11,460.76
Total.....	5,191,453.74
Construction Equipment.....	13,696.91
Tug "Escort".....	4,951.97
Pile Driver "Haveside".....	6,994.94
Schooner "Bangor".....	1,750.00

## COMPANY EXHIBIT No. 117—Continued

Analysis of Cost of Carquinez Bridge—Total as of August 31, 1937—  
Continued

Labor & Materials .....	14,039.60
Fender System .....	597,366.28
Sub-total .....	625,102.79
Total .....	5,816,556.53
Scales, Registers, Fog Signals & Other Special Equipment .....	22,561.95*
Total .....	\$5,839,118.48
Preliminary Expenses, General Overhead Costs, Interest, Etc.:	
Damage Claim .....	124.50*
Engineering Office Salaries .....	13,478.75*
Engineering Salaries & Expenses .....	352,165.93*
Automobile .....	724.67*
Office Equipment .....	1,020.31*
Sub-total, Items marked (*) .....	390,076.11
Preliminary Expenses .....	476,707.70
Organization & Other Expenses .....	327,883.91
Commission on Stock Sales .....	148,823.79
Interest During Construction .....	688,092.56
Interest on Bonds & Notes .....	648,449.12
Interest on Bank Balances .....	98,964.39†
Amortization, Bond Discount & Expense .....	138,607.83
General Expenses .....	492,018.27
Rent of R. of W. & Floating Equipment .....	3,395.00
Tax of 2% on Bond Coupons .....	6,353.90
Office Supplies & Expense .....	10,529.43
Office Salaries .....	104,471.37
Special Services .....	102,938.24
Legal Fees .....	198,763.24
[fol. 638]	
Directors Fees .....	9,631.75
Trustees Fees .....	4,008.16
Office Rent (S.F.) .....	8,338.36
Printing, Postage, Stationery .....	8,604.69
Advertising .....	8,883.60
Taxes, Revenue Stamps, Licenses .....	11,336.72
Insurance .....	8,736.76
Telephone & Telegraph .....	3,244.90
Depreciation, Furniture & Fixtures .....	1,235.28
Miscellaneous .....	38,209.18
Credit to Antioch Bridge .....	34,662.31†
Grand Total Exclusive of Lands & Furniture .....	\$7,863,451.17

† Red figures.

[fol. 639] Mr. Thelen: At the very outset, Mr. Gerwick, I would like to ask you if you will please indicate the pages in that exhibit for which you are responsible.

A. I have completed this from the beginning up to and including the first three items on page 26 and not on page 27 as I previously stated.

Q. As I understand it, Mr. Ready is responsible for the remaining portion of the exhibit?

A. Yes, he is.

Q. Your work in connection with this exhibit consisted largely in the preparation of an estimate of reasonable historical cost of the piers, foundations, of the Garquines Bridge, did it not?

A. Yes, it did.

Q. Then there are certain additional items which you have accepted, to which we may refer later, such as the superstructure and so on?

A. Yes, that is true.

Q. May I ask you at this point, you have shown how you secured the items which enter into the working platform and guide frame; may I ask you just how you secured the prices which you applied to those materials?

A. I secured prices in two ways—having my own estimates of the date, and looking back through similar work at that time and getting market prices from the producer.

Q. As a matter of fact, you were doing work very similar to this down at the Dumbarton Bridge at this very time, were you not?

A. I was, and using prices practically every day of that time and having the records as a check, and I further looked up the different companies and made a check in getting prices at that time.

Q. Then I suppose you added the necessary transportation charges to the Commission as you would price them here in San Francisco?

A. Yes, that is true. In this type of work we don't buy lumber, for instance, from the local yards but we bring it in from the north, ship's tackle, because it is cheaper that way: and when we bring it in ship's tackle we have to have a handling charge to the barge, have to pay the tolls on it and then you have the transportation to the site of the work.

Q. Now, as far as wages are concerned, that would involve both the rate of wages and the efficiency of labor, would it not?

A. Yes, it would.

Q. How did you determine the rate of wages?

A. The rate at that time was \$8.50 for pile driver men and wharf builders. At the present time the hourly rate for pile driver men and wharf builders is \$1.40 per hour.

Q. Then I suppose as far as the efficiency of labor is concerned, so that you would know how many to put in a particular gang, that that would be a matter which you would have to determine in the light of your own judgment and experience?

A. That is correct.

Q. Do you think it would be possible for a person who had not had experience in this type of work to reach an accurate conclusion on this subject?

A. I don't see how they possibly could.

Q. Would you like to proceed with another item in connection with Pier 4, such as the cofferdam?

A. Yes, I would, but I would like to further state in view of your questioning that not only has the wage rate per hour for that type of labor changed since 1925, we will [fol. 641] say, but the compensation rate then averaged about 8 per cent. At the present time on that class of labor the manual is 25.71 per cent, which is practically the same as an increase in wages because it enters into the cost.

Mr. Thelen: May I suggest at this point, in order to keep my promise with the Commission's experts, it may be desirable to defer further direct examination on this exhibit at this point and to offer in evidence the next exhibit so that they may have that also. We now offer in evidence an exhibit entitled "Reproduction of Carquinez Bridge (new), American Toll Bridge Company" and ask that it take Respondent's Exhibit 118.

Commissioner Riley: So received and noted as Exhibit 118.

(Here follows Exhibit No. 118—page 25.)

[fol. 642]

COMPANY EXHIBIT No. 118

Witness- Gerwick and Ready

Reproduction of Carquinez Bridge (New)

American Toll Bridge Company

Cases Nos. 4244 &amp; 4259

San Francisco, December —, 1937.

[fol. 643]

Carquinez Bridge

Recapitulation of Construction Cost

Reproduction  
Cost New  
1937

(1) Piers and Foundations:			\$43,286.00
a. Exploration of foundations.....			
b. Pier No. 1.....	\$14,395.25		
c. Piers Nos. 2, 3-A & 3-B.....	1,786,661.34		
d. Pier No. 4.....	445,959.64		
e. Pier No. 5.....	40,154.83		
f. Piers Nos. 6, 7 & 8.....	62,652.44		
g. Piers Nos. 9, 10 & 11.....	5,050.68		
h. Pier No. 12.....	4,188.62		
i. Construction wharf, addition to wharf or trestle.....	84,390.00		
j. Overhead.....	120,150.00		
k. Total (b to j, incl.).....		2,563,602.80	
l. Riprap, Piers Nos. 2 & 2.....		39,362.00	
Total (a to l, incl.).....		2,646,250.80	
(2) Superstructure.....		5,131,520.48	
(3) Existing Fender System and Miscellaneous.....		625,103.00	
(4) General and Miscellaneous:			
a. Approach work and contributions.....	35,322.00		
b. Toll house building.....	20,000.00		
c. Other buildings.....	15,000.00		
d. Special equipment for toll house, bridge, etc.....	24,367.00		
(5) Lands.....	66,835.00		
(6) Furniture and Fixtures.....	19,668.00		
(7) Total of Items (1) to (6), Inclusive.....		6,584,006.28	
(8) Engineering and Inspection.....	6%	395,040.38	
(9) General Overhead Expenses.....	4%	263,360.25	
(10) Preliminary Expenses—Organization.....	3.5%	230,440.22	
(11) Total of Items (1) to (10), Inclusive.....		7,472,847.13	
(12) Interest During Construction.....	17%	1,270,384.91	
(13) Grand Total.....		\$8,743,231.14	

[fol. 644] Mr. Thelen: Now, Mr. Gerwick, without going into the details of this exhibit at all, am I correct in assuming that what you have undertaken to do here is to make



an estimate of the cost of reproduction of the Carquinez Bridge new, taking prices: as of 1937?

A. That is correct.

Q. Will you kindly look at page 25 and advise me whether or not you are responsible for the first three items on page 25?

A. Yes, the first three items on page 25—from the beginning to that point I have prepared it.

Q. And Mr. Ready is responsible for the remaining items, is he not?

A. Yes, that is true.

Mr. Thelen: If it is agreeable to the Commission I would like to take Mr. Gerwick from the stand now, reserving the right to examine more carefully later on concerning these exhibits, and I would like to put Mr. Ready on the stand for just a few moments.

Commissioner Riley: Very well.

LESTER S. READY, a witness called on behalf of the American Toll Bridge Company, being first duly sworn, testified as follows:

#### Direct examination:

Mr. Thelen: Mr. Ready, I should like to defer qualifying you until some subsequent time so that we may get these exhibits in. If you will kindly turn to Exhibit 117, will you please point out the portions of that exhibit for which you are responsible?

A. Referring to page 26 of Exhibit 117, commencing with item 4, general and miscellaneous expense, and the items from that point to item 13 have been my computations starting with the figures accepted from Mr. Gerwick's testimony as to items 1, 2 and 3. And on page 27, there is set forth a comparison of the original cost as recorded by the Company, this amount adjusted to the reasonable historical cost as taken from the preceding page.

Q. Will you please turn now to Exhibit 118, which is the estimate of reproduction cost new, and indicate for what portion of that exhibit you are responsible?

A. Page 25, for the figures set forth commencing with item 4 to item 13, which are built up in part upon the figures submitted by Mr. Gerwick in items 1, 2 and 3.

Q. I will ask you whether or not you have prepared an exhibit on interest during construction which you are ready to submit at this time?

A. I have a table or exhibit entitled on the first page, "Table 1, Summary, comparison of interest during construction, Carquinez Bridge," a document consisting of three tables and a chart.

Mr. Thelen: I would ask that that exhibit be introduced and marked Respondent's Exhibit 119.

Commissioner Riley: So received and noted.

A. I might just explain in a few words that this exhibit is a computation of the reasonable interest during construction applicable to the original cost of the properties and also the reasonable historical cost of the properties. And in the Table No. 2 is summarized the data from Table No. 3, and also in the righthand columns, 8 and 9, the computation of the compound interest during construction, including the total. In Table 1 is a comparison of what the books actually show, representing 9.6 per cent on the base capital. The figures computed here, applied to the entire basic capital, of 14.7 per cent, compare with Mr. Mitchell's estimate of interest during construction of 19.1 per cent of base capital.

[fol. 646]. BEN C. GERWICK, recalled.

Direct examination resumed:

Mr. Thelen: Mr. Gerwick, will you please turn to your Exhibit No. 117, being your estimate of the reasonable historical cost of the Carquinez Bridge. As I remember it when you were last on the stand you had started a statement of the general methods used by you in connection with Pier 4 as being somewhat typical of the other piers.

A. That is correct.

Q. And, as I remember it, you had covered item 1, the working platform and guide frame; also item 2, the coffer dam, and were about to start on item 3, excavation.

A. That is correct.

Q. Will you please state the general method used by you in connection with that item?

A. Well, you have to consider now that the working platform is in place, that your bracing has been sunk both to

position and to grade, the sheet piles have been driven and that you are now ready for your excavation. This excavation has to be done with a derrick, with a clam-shell or another type of bucket, might be an orange peel bucket, to dredge between the bracing. That requires a derrick, an engineer, deck hand, requires at least one signal man to guide the falling of the bucket between the bracing so that it won't injure the bracing or foul the bucket; it requires that there be at that particular location bottom dump barges to put the excavated material in, and a towboat to tow the material out and dump it in deep water.

[fol. 647] Q. State whether or not excavation under such circumstances would be more expensive than it might ordinarily be?

A. Yes; naturally, it would be a great deal more expensive than ordinary excavation.

Q. In your judgment, would it be possible to have secured excavation at that time under the circumstances which you have set forth; including the excavation between the bracing, and one thing and another, for a price as low as \$1 per cubic yard?

A. No, that would be impossible; I believe it would be an impossible cost.

Q. Were you at or about this same time engaged in excavation work in connection with under-water construction?

A. Yes, I was.

Q. Please state just what that work was?

A. At that particular time, in 1925, or in 1924 and 1925, I was engaged in laying the submarine line of the Hetch Hetchy across Dumbarton Straits, building the caisson at Dumbarton Straits, building the 36 piers for the Hetch Hetchy crossing at Dumbarton and also building the 10 piers for the Dumbarton highway bridge across Dumbarton Straits.

Q. Did any of that work involve excavation?

A. Yes, it all involved excavation below water.

Q. State whether or not the price that you here use of \$1.75 per cubic yard is the price which is based in part on your actual experience in excavation work at that time?

A. Yes, the price would be a fair price for the excavation under those conditions but not as a bid price. That is a cost price to the man who is actually doing the work.

Q. Will you please turn to item 4, "Pre-cast concrete piles" and state what you did in connection with that item?

[fol. 648] A. In building and driving precast concrete piles you first have to have what we call or term a casting yard.

Q. A what yard?

A. Casting yard. That requires, depending on the number of piles, a considerable area. That has to be leveled off and then we bed wooden sleepers to a level grade and then on those sleepers you nail a wooden bottom, very similar to a wooden floor, and then you make your side forms and set them up to the dimension of the precast concrete pile; you then place your reinforcing steel and then you place your concrete; then the forms are stripped and then the concrete is cured with water for a period generally of 30 days. After the piles are cured they have to be moved from the casting yard, transported to the site and picked up and handled by the driver, ready for driving.

Q. How much of a crew would it take to drive them?

A. For driving precast concrete piles the standard crew would be a foreman, an engineer, a fireman and not less than six pile driver men, sometimes seven and sometimes eight.

Q. I will ask you as to whether you have had actual experience in connection with the precasting of concrete piles and the driving of such piles?

A. Yes, I have. I have made and driven precast concrete piles as large as 24 inches square and as long as 105 feet, which would roughly weigh about 30 tons each.

Q. Were there any concrete piles used in connection with the Dumbarton highway work to which you have testified?

A. Yes, there were; I can't recall the number at this time but there were several hundred used at Dumbarton.

Q. You had experience in connection with concrete piles as early as 1910, did you not?

[fol. 649] A. I believe, if I am not mistaken, while I did not drive the first concrete pile, I believe I made and drove the first concrete pile that was driven with a hammer. At that time some had been jetted down. That was at Boston, Massachusetts, and you can find that in Ernest L. Ranson's book on concrete.

Q. As far as these particular concrete piles at the Carquinez Bridge are concerned, they were driven with a hammer?

A. Yes, driven with a hammer.

Q. State whether or not you consider the prices which you here show for the piles, for the rigging, for the driving



and for the handling to be proper prices for use at the time when these particular piles were prepared and driven?

A. I do; I consider them a very fair and reasonable price.

Q. Now, item 5, "Permanent wooden piles", that is rather a small item, is it not?

A. There were 101 wooden piles in Pier 4, and we have a price for the piles and then a price set up for the handling, setting and driving. That is the net labor of handling and driving.

Q. Now, without going into the details, you might in connection with item 6, "Miscellaneous", simply state in general what that item covers?

A. Item 6 covers the equipment naturally used on a job of that type and the transporting of that equipment from its base to that pier and transporting it back to the home yard. It also includes oil, fuel and water, lines, small tools, steel lines, and so forth.

Q. Were you able, by the way, to find any reference to any of these items in Commission's Exhibit No. 3 in connection with Pier 4?

A. No, I found none.

Q. Well, we will pass over item 7, "Clean-up" and 8, [fol. 650] "Gravel bottom", they being small items, and I will ask you to turn now to items 9 and 11, "General concrete cost at mix plant" and advise the Commission how you handled that item?

A. In items 9 and 11, I first set up the cost of furnishing the materials and mixing the concrete, and then later on in the other items we use that price as a unit. To get at the cost of the concrete we figured in this particular pier the number of barrels of cement and we figured them at the market price at San Francisco; figured the amount of sand that is to be used and the amount of gravel; then we have to figure our water, which includes here our tanks, pipe and our whole water system for Pier 4. The cement then has to be transported from San Francisco to the site. We have a small item set up for lost sacks, which is an item of cost we have at that time. We have the plant, and in this particular estimate we have charged half of it to Pier 4 and half to the caisson because you would not have the two plants on the job. Finally we divide through and we find we have a cost of the concrete at the mixing plant of \$8.62 for materials, and plant and equipment; and \$1.60 for labor,



and throughout the estimate then of Pier 4 we used those unit prices which have been developed there.

Q. Throughout your estimate wherever possible you show separately, do you not, the cost of material and the cost of labor?

A. That is right.

Q. So that what you do will be evident to anyone reading the exhibit?

A. Yes, sir, that is right.

Q. While we are dealing with the subject of concrete, Mr. Gerwick, may I ask you as to how you developed your concrete costs in connection with the smaller piers such as 1, 5, [fol. 651] 6 and so on?

A. We developed it in this way: In Pier 1 there were 575 cubic yards, in Pier No. 5 there were 1120 cubic yards; in Piers 6, 7 and 8, 1128 yards; in Piers 9, 10 and 11, 232 cubic yards, and in Pier No. 12 there were 191 cubic yards, making total concrete yardage of 3,246. That would require 4,870 barrels of cement, and taking the price at \$2.34 net at San Francisco, would be \$11,249. It would require 1200 cubic yards of sand at \$1.50, or \$1800; 2400 cubic yards of gravel at \$2.15, or \$5,160; the water, including the piping and the pipe to these various piers and the tank, would be \$2400; the freight on the cement would be \$730, 4,870 barrels at 15 cents; sack loss would be \$243; handling of cement from the barge to storage, \$487; handling of sand from barge to storage, \$120; handling of gravel from barge to our storage would be \$240; rental of the crane for handling this, at 5 cents a cubic yard, would be \$180. Then we have a one-yard mixer to move from point to point, which would be 9 set-ups and moves, which would be \$750, divided \$250 and \$500 for net labor. Then we have the write-off on the mixer of \$500. Then handling the sand and gravel from the loading platform to the various piers would be \$900; handling cement to the same piers would be \$200 for materials and \$530 for labor; storage shed for our cement would be \$500; the net cost of mixing at 30 cents a yard would be \$162—I think I read that wrong. Would you please have read the net cost of mixing?

Q. Yes, Mr. Reporter, will you please read that?

(Record read.)

A. No, that would be \$974, that should be: Then maintenance of equipment would be \$162; the fuel would be \$125;

runways for the 9 piers and the setting up and moving of [fol. 652] them would be \$600; the chutes and elephant trunks would be \$300; the placing of the concrete would be \$3,246; the curing of the concrete would be \$268; patching and the finishing of the concrete, for materials, would be \$02, and for net labor, \$324; the form work would be \$8,000 for materials and \$4,270 for labor. That would be a total cost for the concrete in place for those piers, for materials, \$31,880, and for net labor, \$13,608. Dividing the sum of those, which is \$45,490, by the total yardage, 3,246 yards, would be \$14 a cubic yard. And then in the estimate on those particular piers we have used that item of \$14 a cubic yard in order to avoid unnecessary repetition of all these items.

Q. Now, Mr. Gerwick, without going into each individual item, I would like to ask you a general question as to the cost of concrete in connection with Piers 2, 3-A and 3-B. Did you develop that figure along the same general lines that you have testified to, or were there any significant changes?

A. We developed the cost of concrete for Piers 2 and 3 the same as we did for Pier 4, using half the cost of the mixing plant for Pier 4 and half of the cost of the mixing plant for Piers 2 and 3.

Q. In other respects, however, I take it the development of the cost would be substantially the same?

A. Substantially the same.

A. On your exhibit, page 14, item 9, "Seal concrete", is there anything that you would like to add in connection with that item?

A. We have taken the concrete, as I have the cost at Pier 4, of \$8.62 for materials per cubic yard and \$1.60 for labor, [fol. 653] and we have figured the concrete seal at 3,000 yards of concrete, and multiplying the 3,000 by the figure of \$8.62 would be \$25,860; and multiplying the \$1.60 for net labor would be \$4,800. That is the cost of the concrete alone. Now, that has to be placed under water through tremie pipe, in the corners, either with a tremie pipe or with a bottom dump bucket in the larger and more open part of the pier.

Q. And these prices that you show here are based on your actual experience in doing that sort of work?

A. Based on the actual experience of doing that sort of work.

Q. We will omit item 10, "Cleaning", the amount not being very large. If you will now turn to item 11, "Pier concrete", 5000 yards; do you want to add anything as to that?

A. The cost of that item has been developed in the same way. We have taken the 5000 yards of concrete at \$8.62 for materials and plant and 5,000 yards at \$1.60 for net labor. We have then figured the forms, which is divided into material and net labor, and then the equipment for curing the placing of the concrete, the curing of the concrete, patching the concrete and the screeding in the top of the concrete.

Q. When you come to item 12, "Reinforcing", that is reinforcing steel, material and labor, and so on, I wish you would develop that a little so as to advise the Commission as to how you got your prices both for material and labor?

A. The base price on reinforcing steel at San Francisco, uncut, per hundred pounds in 1924, up until August of 1924, was \$3.65 per hundred pounds. From August there was a drop to \$3.35 which continued throughout 1925. [fol. 654] The reinforcing steel then had to be shipped to the Carquinez Bridge and had to be cut to length and bent and placed. You have, then, the labor of doing that, the transportation, the furnishing of the accessories such as tie wire and chairs, as we call them, and the insurance.

Q. Are the prices which you here use for labor and materials those which you know to have been in effect at that time in this vicinity?

A. Yes; for that particular amount of steel and under those particular conditions, that is, in our judgment, the correct price, the correct cost—I will modify that.

Q. As to item 14, power line, it was necessary, of course, to get power for the operation of some of your equipment, wasn't it?

A. Yes, it was.

Q. Is there any way of getting the power other than to construct a power line?

A. Had to have a power line and a bank of transformers.

Q. Is there any way that you could have avoided the cost for back-fill shown in item 15?

A. The back-fill had to be made, otherwise there would be an increased tendency for scouring around the pier.

Q. Did you have experience in back-fill costs at or about that time anywhere else?

A. Yes, I was doing that kind of work around San Francisco Bay.

Q. Are the prices that you show the actual prices being paid for that type of work at that time?

A. We have used the price of 75 cents per cubic yard which, under those conditions, we consider quite low.

Q. Now, if you will please turn to page 16, item 16, "Riprap". How did you get the cost of \$1.40 in place for your [fol. 655] riprap?

A. We have figured the cost at the quarry at \$1 per ton; we have figured the cost of towing to the job at 20 cents a ton, which is in our judgment the correct rate, and then we have figured a cost of 20 cents per ton for placing riprap, making a total of \$1.40 per ton.

Q. Were those going figures as of that time?

A. If anything, that is a little low, a little lower than the going figure at that time.

Q. I note in item 17 an item for contingencies of \$7500. State whether or not it is always necessary in making estimates of this character to include something for contingencies?

A. That is a total amount of \$15,000, \$7,500 for materials and \$7,500 for labor, a total of \$15,000; and on a pier as large as Pier No. 4, built under conditions which you have at Carquinez Straits, a pier that you know would cost in the neighborhood of \$400,000, I would consider that it was absolutely necessary to have that much of a contingency.

Q. That would be less than 4 per cent, would it not?

A. Yes, that would be less than 4 per cent.

Q. Would there have been any way of avoiding item 18, insurance, both compensation insurance and public liability insurance?

A. Not under the State laws, unless a contractor was insuring himself, which I don't think he would do.

Q. Those figures are considerably less than the corresponding figures would be at the present time, are they not?

A. Yes.

Q. We will come to that a little later. I notice under item 19, "Profit, 10 per cent". What is that item? State whether or not it is customary for contractors to figure [fol. 656] on at least some profit in connection with their work?



A. Naturally, the contractor would have to have a profit or there wouldn't be any contractors.

Q. State whether or not 10 per cent is an amount which is frequently used in that connection and was at the time when this bridge was constructed?

A. 10 per cent is frequently used, but on a job containing the hazards of under-water construction, I think he might be criticized for using 10 per cent. I think in general the average contractor would think he would be entitled to a larger percentage.

Q. The last item, No. 20, "Surety bonds,  $1\frac{1}{2}$  per cent", state whether or not it is customary to require a contractor to give a surety bond?

A. Yes, it is customary, and  $1\frac{1}{2}$  per cent for work of that type is the customary rate.

Q. You show a total estimated cost on Pier 4 of \$422,325. State whether or not, in your judgment, that would be a fair and reasonable price to assume for the original construction of that pier?

A. I think it is a fair and reasonable — for the construction of Pier No. 4 at that time.

Mr. Thelen: Now, Mr. Commissioner, it is not my desire to go through all the other piers in the same detail but I thought it might be helpful if we would take one of these piers and have the witness develop in considerable detail just how he handled the matter, so that the Commission will be able to visualize the situation. As far as other piers are concerned, I will have relatively very few questions.

— You might turn back, if you will, Mr. Gerwick, to Pier 1 on page 1, and I have just a few questions as to [fol. 657] that. Have you before you Commission's Exhibit No. 3? I wish you would please look at page 17 of that exhibit, giving the estimate for Pier 1.

A. Yes.

Q. Then I wish you would look at your own exhibit, Exhibit 117, page 1.

A. Yes.

Q. Now, I wish to make a comparison of the items which are allowed in the respective exhibits and I wish you would state, looking at Commission's Exhibit No. 3, page 17, as to which items you there find, and then if you will turn



to your own exhibit and draw attention to the additional items which are shown on your exhibit.

A. I find in the Commission's exhibit an item for excavation of \$1 per yard; an item for concrete and an item of reinforcing steel. I find three items there.

Q. And in addition to that you find, do you not, on page 19, an item of 5 per cent for extra work and changes in plans?

A. Yes.

Q. And these are the only items, are they not, which you find in connection with Pier 1?

A. Those are the only ones.

Q. I wish you would look now at your Pier 1 and state the additional items which you there set forth?

A. After the excavation has been made, the excavation has to be trimmed ready for concrete.

Q. You show an item for that?

A. I show an item of \$100.

Q. Now, what next?

A. The next item which seems to have been omitted is for structural steel, which was furnished and set in the contract, which is an item of \$134. According to the regulations the men have to be paid their fares and their transportation, [fol. 658] and we have an item for that.

Q. Is that item in addition to the allowance which you have heretofore made for the cost of wages?

A. Yes, that is in addition. And we have an item of \$200 for the setting up of the plant and the tools, miscellaneous equipment, that would be used. We have an item of compensation insurance, we have an item of contractor's profit, and we have an item for surety bond.

Q. Now, I will ask you, without going through a similar story as to the other piers, whether the situation as to this pier as to omitted items in the Commission's exhibit, may be deemed to be fairly typical of the situation as to all of the piers?

A. Yes, it would seem to be typical.

Q. I wish you would turn again to Commission's Exhibit 3, page 19, under Piers No. 6 to 8, the item of concrete, 1,128 yards at \$14, equals \$15,790. Were you here when Mr. Mitchell testified as to what was included in that item?

A. Yes, I was.

Q. Did you hear his testimony to the effect that that item includes not merely concrete but also the 12 cofferdams?

A. That is what I understood Mr. Mitchell to so state.

Q. Will you please advise the Commission as to your best estimate of the cost of the 12 cofferdams, without for the moment going into the question of the cost of the concrete?

A. I would have to take time to make a summation of a number of items in order to give you that. He said it included cofferdams and I presume it would also include the false work you would have to have in order to take the [fol. 659] driver to those piers in order to drive the cofferdams.

Q. As I remember it, there was nothing said specifically about false work; but presume for the sake of my question that that is to be included.

A. Why, I would say roughly that the cost of the cofferdams would be about the same sum, about \$15,000.

Q. That would leave nothing left for the 1128 cubic yards of concrete, would it?

A. Would leave nothing for the concrete.

Q. Based on your wide experience in matters of this kind, do you believe it would be possible to cover both the concrete and the cost of cofferdams at this location for \$14 per cubic yard of concrete?

A. No, that would be an absurdity.

Q. Then on pages 23 and 24 of your exhibit you show certain items in connection with construction wharves. Am I correct in assuming those items, totaling \$84,390, represent the actual cost of those items shown on the company's books?

A. Yes, represent the actual cost of the construction wharves and the construction buildings as actually shown on the Company's books.

Q. From your experience state whether or not you would consider that cost to have been a reasonable cost for this construction at this time and under the circumstances at the time?

A. I would consider \$84,000 a very reasonable cost for the construction wharves necessary in building a bridge of that size at a similar place to the Carquinez Bridge.

Q. Were you able to find in Commission's Exhibit No. 3 these items of general overhead or contractor's overhead [fol. 660] amounting to a total of \$113,328, or any of them?

A. No, I found no such items.

Q. Will you turn now to your Exhibit No. 118, which is your estimate of the cost of reproducing the bridge new as of 1936 and 1937, I believe?

A. Yes.

Q. Without going into details any more than we have to, am I correct in assuming, first, as to the items shown in this exhibit, that they are the same as the items shown in the preceding exhibit?

A. In general, yes; there are some additions, but in general I have followed through the same method.

Q. Now, as to the prices used by you for wages, will you explain how those prices compare with the wage prices which you used in Exhibit 117?

A. I have here the wage scale paid certain crafts in the period of 1923 and 1924. In that period a carpenter received \$8 a day.

Q. Where was that, Mr. Gerwick?

A. San Francisco and San Francisco Bay territory.

Q. What did you take to be his wage in connection with Exhibit 118?

A. The wage scale for carpenters—and I mean form carpenters—in 1936 was \$9 per day.

Q. Will you take the other principal crafts and just make the comparison?

A. In 1923 a cement finisher was \$8.50 a day and in 1926 \$9. Hoisting engineers, the first record I can get is in 1929, which is \$9 and the rate is also set up for 1936 as \$9. For pile drivers and wharve builders, in 1923 the rate was \$8, and in 1936, beginning in June of 1936, it was \$9. In 1937, in that period, it had changed to \$11.20. For pile driver hoisting engineers in 1923 it was \$8 and in 1936-1937, part of that time it was \$10, and also in that period [fol. 661] it changed over \$12. For structural iron workers it was \$9 in 1923 and in the period of 1936-37 it started at \$11 and changed to \$12.

Q. You gave certain wages as being effective in 1923. Do you know whether those wages were also effective in 1924 and 1925?

A. As far as I know, they were with the exception of one change: There was a short period that the pile drivers and wharf builders went from \$8 to \$8.50.

Q. Now, I wish you would take your Exhibit 118, Mr. Gerwick, and turn to page 16, item 18, "Insurance, compensation, public liability and property damage". I wish

you would comment on that item. It goes largely to wages, as I understand it?

A. The compensation and public liability insurance are based on the labor, on the total amount of the labor. In 1936 and 1937 the basic rate for pile driver men and wharf builders, who would be largely employed on a structure like the Carquinez Bridge, was 25.99 per cent of the total labor.

Q. How does that compare, if you happen to have a figure available, with the situation of 1924 and 1925?

A. It averaged about  $9\frac{1}{2}$  per cent in the earlier period. Excavation in 1936 and 1937, the basic rate was 11.59 per cent. I haven't the figures and could not obtain the figures in 1924 but, from my own recollection, it was running around 6 per cent. The same is true of concrete and also the same with carpenters later. The greatest changes in the compensation are in the pile driving and wharf building and in structural steel. The basic rate now for structural steel is 31.8 per cent as against an average of about [fol. 662] 10 per cent at that time.

Q. I take it these increases in the cost of insurance necessarily had the effect of increasing the amount paid for wages in connection with the construction of this bridge?

A. The compensation insurance is based directly upon the amount of labor.

Q. I wish you would look at the same page, item 19, under the head of "Taxes, old age benefit and unemployment insurance"; those, of course, were not effective in 1924 and 1925?

A. No.

Q. What is the situation with respect to the States sales tax which you next refer to?

A. There was no sales tax at that time.

Q. Leaving for the moment the subject of wages, Mr. Gerwick, I wish you would turn now to the subject of materials in 1936 and 1937, the prices of those materials as compared with the prices for the same types of materials in 1924 and 1925; just take a few of the more important materials and compare them, please?

A. We might take the item of structural shapes.

Q. That is steel?

A. That is steel. In January of 1924, basis of structural shapes or structural steel at San Francisco, it was \$3.60; in San Francisco in January, 1936, it was \$3.50; on

reinforcing steel bars in January, 1924, \$3.65 base per hundred pounds; in January, 1936, it was \$2.47½. Cement in January, 1924, was \$2.61 net per barrel, and in January of 1936, net, in cloth it was \$2.32 per barrel. I might say in 1924 and 1925 in general we obtained cement in cloth bags. Now we can obtain cement in cloth, in paper or in bulk. Lumber in 1924 was much higher, being quoted at \$36-\$38, the same lumber in 1936 being \$25 per thousand feet board measure.

Q. Would you care to make any general comment as to the price of materials in 1936 and 1937 as compared with 1924, 1925 and 1926, or would you rather—

A. I haven't made a study of it any more than I have of the principal structural materials listed month by month during those years. Some are higher and some lower. As a whole, I would say more or less the same.

Q. How about the application of the State sales tax? That would create quite a difference, would it not?

A. In 1936 and 1937 we would have to add, to get at the cost of any particular job, would have to add sales tax of 3 per cent.

Q. Can you add that tax to the complete cost of the superstructure steel so that we can get some idea of what is involved?

A. 3 per cent of the structural steel on that bridge would be more than \$60,000.

Q. In remaining portions of Exhibit 118 you show again, do you not, the items going into contractor's overhead on page 23?

A. Yes.

Q. And the total figure is slightly in excess of the corresponding figure of your earlier exhibit, is it not—about, oh, between \$6,000 and \$7,000 more?

A. Yes.

Q. Then I will ask you a general question as to that exhibit, as to whether in your judgment, the figures which you show are fair and reasonable figures for the items to which you have applied them during the years 1936 and 1937?

A. In best judgment, that is a fair and reasonable figure.

[fol. 664] Mr. Thelen: Mr. Gerwick, have you prepared an estimate of the reasonable cost of the original construction of the Antioch Bridge?

A. Yes, I have.



Q. And you have your exhibit before you?

A. Yes, I have.

Mr. Thelen: If the Commission please, we ask that this exhibit which is entitled "Reasonable historical cost, Antioch Bridge, American Toll Bridge Company", be introduced and given No. 120, I think it is.

Commissioner Riley: 120 is correct, sir; it will be so received.

(Here follows Exhibit No. 120—page 4.)

[fol. 665] COMPANY EXHIBIT No. 120

Witness-Gerwick

Reasonable Historical Cost, Antioch Bridge, American Toll Bridge Company

San Francisco, January —, 1938.

[fol. 666] Antioch Bridge

Recapitulation of Construction Cost

	Reasonable Historical Cost
(1) Substructure .....	\$727,387
(2) Superstructure .....	450,997
(3) General and Miscellaneous:	
a. Approach embankments, etc. ....	10,000
b. Lights, cables, signals .....	5,000
c. Contractual liability insurance .....	3,500
(4) Lands .....	1,795
(5) Furniture and Fixtures .....	4,685
(6) Total of Items (1) to (5), Inclusive .....	\$1,203,364
(7) Engineering and Inspection, 7% .....	84,235
(8) General Overhead Expenses, 5% .....	60,168
(9) Preliminary Expenses:	
Organization, 3.5% .....	42,118
Stock selling .....	35,451
(10) Purchase of Lauritzen Ferry Franchise .....	50,000
(11) Total of Items (1) to (10), Inclusive .....	\$1,475,336
(12) Interest During Construction, 8.3% .....	122,453
(13) Grand Total .....	\$1,597,789

[fol.667] Mr. Thelen: Mr. Gerwick, in preparing that exhibit, state in a very general way how you proceeded?

A. We arrived at the quantities of material in the bridge through a study of the plans, a study of the records and any other data we could get on the bridge.

Q. Then did you prepare any detailed plan before you made your actual estimates of cost?

A. No, in the case of this Antioch Bridge, we did not. As you will note, the construction is very much simpler than the Carquinez Bridge.

Q. So you didn't find it necessary to prepare plans in as much detail as on the Carquinez Bridge?

A. That is true, we did not.

Q. What unit prices of labor and materials did you use in connection with this estimate?

A. We used the prices for materials that prevailed at that time and the prices for labor that prevailed at that time.

Q. And in connection with labor, you naturally applied the percentages for compensation and other insurance that were applicable to labor?

A. Yes, that is true.

Q. And in connection with materials, I take it you applied the percentage for sales tax?

A. No, there was no sales tax at that time.

Q. No sales tax in 1936-1937?

A. Then I was mistaken.

Mr. Thelen: Will you read the question, please? (Question read.) I will reserve that question for the next exhibit, because you say there was no sales tax in 1924, 1925 and 1926.

A. Yes.

Q. Now, have you before you the Commission's Exhibit No. 17?

A. Yes, I have.

[fol. 668] Q. That contains, does it not, an estimate of the reasonable original cost of the Antioch Bridge and also an estimate of reproduction cost new?

A. There is a figure stated here as the estimated cost.

Q. Well, I wish you would turn to pages 1 and 2 of that exhibit and state what figures you there find in connection with the estimated original cost in so far as physical items are concerned?

A. It states on page 1 that the estimated construction cost in detail in 1924 and 1925 is \$1,023,657.

Q. Then on the next page you find an item of \$10,607 for approaches and of \$10,000 for riprap, do you not?

A. Yes.

Q. Do you find any other figure at all referring to the original cost of the physical elements of the bridge?

A. Those are the only three figures I find.

Q. In your case I take it you have given items in considerable detail, both as to the substructure and deck, on the one hand, and the superstructure on the other?

A. Yes, that is true.

Q. And have shown to the best of your ability and in as much detail as you deemed appropriate all the items that entered into the substructure, on the one hand, and the superstructure, on the other?

A. That is true.

Q. And what is your final figure of a reasonable historical cost for substructure? Will you turn to the last page, please?

A. \$727,387.

Q. And for the superstructure?

A. \$450,997.

Q. And then you add certain small items for approach embankment, lights, cables and signals and contractor's [fol. 669] liability insurance?

A. That is true.

Q. State, please, whether or not that is as far as your participation in the exhibit goes?

A. That is true. I did not prepare items 4 and 5 and from there on.

Q. Those are Mr. Ready's items, are they?

A. Yes, Mr. Lester Ready's.

Q. I will now ask you, whether you have also prepared an exhibit of the estimated cost of reproducing the Antioch Bridge new?

A. Yes, I have.

Q. You have that exhibit before you, have you?

A. I have it before me.

Mr. Theien: We would ask that the exhibit entitled "Reproduction of Antioch Bridge new" be introduced and marked Exhibit 121.

Commissioner Riley: It will be so received and marked as Exhibit 121 by the respondent.

(Here follows Exhibit No. 121—page 4.)

[fol. 670] COMPANY EXHIBIT No. 121

Witness Gerwick

Reproduction of Antioch Bridge (New)

American Toll Bridge Company

San Francisco, January —, 1938.

[fol. 671] Antioch Bridge

Recapitulation of Construction Cost

	Reproduction Cost New— 1937
(1) Substructure	\$771,902
(2) Superstructure	525,476
(3) General and Miscellaneous:	
a. Approach embankments, etc.	10,000
b. Lights, cables, signals	5,000
c. Contractual liability insurance	3,500
(4) Lands	1,795
(5) Furniture and Fixtures	4,685
(6) Total of Items (1) to (5), Inclusive	<hr/> \$1,322,358
(7) Engineering and Inspection, 6%	79,341
(8) General Overhead Expenses, 4%	52,894
(9) Preliminary Expenses—Organization, 3.5%	46,283
(10) Purchase of Ferry Franchise	50,000
(11) Total of Items (1) to (10), Inclusive	<hr/> 1,550,876
(12) Interest During Construction, 10%	155,088
(13) Grand Total	<hr/> \$1,705,964

[fol. 672] Mr. Thelen: State whether or not the items which you have used in your exhibit are the same as the items which you used in Exhibit 120?

A. They are the same with the exception of certain additional items for sales tax and Social Security tax.

Q. As to sales tax, I suppose in this case, as also in the case of the Carquinez Bridge, that tax is applied to the cost of material as distinguished from labor?

A. Applied to the cost of materials entering into the work and also on to the cost of any materials bought for the work, whether it entered into the final work or not.

Q. Are the methods that you used in estimating the reproduction cost new of the Antioch Bridge in general similar to those which you used in estimating the reproduction cost new of the Carquinez Bridge?

A. In general, yes.

Q. What did you do as to unit prices for wages and materials?

A. We used in the reproduction new the unit prices of labor as of the date 1936-1937 and the labor prices of 1936-37. In the historical reproduction we used the prices of labor of 1924 and 1925 and of material at that time.

Q. Have you Commission's Exhibit 17 before you?

A. Yes, I have.

Q. I wish you would turn to page 5 and indicate any figures that you find there with reference to the various physical items which enter into the bridge?

A. I find one figure there.

Q. What is that figure?

A. \$1,004,021, estimated reproduction cost new in 1936-1937.

[fol. 673] Q. That is the only figure in dollars, is it, which refers to any of the physical items?

A. That is the only figure which I find on the reproduction cost new.

Q. On your exhibit, as I understand it, you have again divided the work into two main heads, that is, the physical work, one being the substructure and deck and the other being the superstructure?

A. Yes.

Q. And under each of those, as I take it, you have listed all the various principal items?

A. Yes, that is true.

Q. And what is your estimate of the cost of reproducing new the substructure?

A. \$771,902.

Q. And the superstructure?

A. \$525,476.



Q. And then you are responsible also for the items appearing under 3 on the last page of the exhibit, are you not?

A. The three items under item 3, yes.

Q. From there on, again, Mr. Ready is responsible?

A. He is responsible for the items from 4 on.

Q. Turning now very briefly to another subject, I will ask you whether or not you, as engineer of the American Toll Bridge Company, have found and reported on any deferred maintenance in connection with the Carquinez Bridge?

A. Yes, I have.

Q. And what have you found, Mr. Gerwick?

A. From soundings which have been made there and from soundings which I had made there a year ago, it was found that certain riprap is necessary for the safety of the structure. And on November 19, 1937, I wrote a letter to Mr. Will F. Morrish, Chairman of the Board of Directors of the American Toll Bridge Company, stating to him the [fol. 674] amount of money I would like to spend on that structure in the next year.

Q. For riprap?

A. For riprap.

Q. How much did you recommend that should be expended?

A. I recommend we should place at once 20,000 tons at a cost of \$33,000 this year. I was speaking of the year 1937. I meant 1937 or early in 1938, and that the year following we should place 10,000 tons costing \$16,500. And I told him we should add each year an amount of \$750 for the cost of taking these soundings.

Q. Is it your judgment at this time that those moneys should be expended in connection with the Carquinez Bridge?

A. Yes, that is true.

Q. Have you found any items of deferred maintenance in connection with the Antioch Bridge?

A. Yes, I have.

Q. Please state what those items are?

A. The bridge needs repainting, and I have so notified Mr. Morrish several times during the year 1937 and I have given him an estimate of the money I would like to spend on the painting. The total cost of the painting would be \$21,670. There is a settlement of one of the concrete spans on Sherman Island, on the approach, and the span should be jacked up into alignment, and I have estimated \$5,500 for

the work. There is a settlement on one of the spans on the east approach, and I have estimated a cost of \$2,500. And for riprap we need to place 8000 tons, which I have estimated at a cost of \$2 in place, or \$16,000.

Q. State whether or not it is your judgment that those expenditures should be made?

A. Yes, I have so recommended to Mr. Morrish that those expenditures be made.

[fol. 675] Mr. Thelen: That is all; you may cross-examine.

Mr. Rowell: I will ask the privilege of deferring cross-examination until some other time, at the convenience of the witness, either at the conclusion of this hearing or some other future date.

Mr. Thelen: That is all right with us.

Commissioner Riley: You may be excused, then.

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LESTER S. READY, recalled.

Direct examination resumed:

Mr. Thelen: Mr. Ready, you were heretofore on the stand but we were so anxious to get our exhibits into the hands of the Commission's experts that I deferred for a while qualifying you as a witness. I would appreciate it if at this time you would state briefly your training, experience and qualifications.

A. I graduated from the University of California in May, 1912, obtaining a degree of bachelor of science in electrical engineering. From May, 1912, to December, 1913, I was employed as an assistant engineer, first in the underground distribution department and later in the power division, of the Pacific Gas and Electric Company in Oakland. From December, 1913, to December, 1926, I was employed full time with the Railroad Commission of California in various capacities. From the start until December, 1917, I was employed as an assistant engineer in the Gas and Electric Division of the Commission in connection with various rate and service matters of the gas and electric utilities of the State. From January 1, 1918, to March, 1923, I held the position of Gas and Electric Engineer of the Commission, [fol. 676] and for a portion of the time had also the title of Assistant Chief Engineer. That work covered the direction

and supervision of all engineering work of the Gas and Electric Division, particularly referring to electric and gas rates, service and analysis of operations in connection with rate proceedings, certificates of public convenience and necessity, and so forth. From March, 1923, to December, 1926, I held the position of Chief Engineer of the Railroad Commission, supervising and directing the work of the division or department, Engineering Division, of the Commission, in all of the various utility matters which that department embraced. Certain of the more important work done included the appraisal of the electric properties of the Pacific Gas and Electric Company and the great Western Power Company in San Francisco, which was done under the direction of the chief engineer at that time. There was also appraisal work of the railway properties of the Los Angeles Railway Company, in connection with rate proceedings, and other similar work. I also directed or supervised the work in connection with telephone matters and in connection with transportation matters that were handled under my general supervision by the transportation engineer and that division or department.

From January 1, 1927, to July, 1927, I was president of the Key System Transit Company operating in the East Bay and the ferries across the Bay.

Commencing with September, 1927, to date, I have been in consulting practice handling various utility matters, mainly for municipalities and public authorities and public bodies. The first work we handled included the work of [fol. 677] consulting engineer for the Railroad Commission from September, 1927, to September, 1929, handling the telephone rate proceeding, or the work in connection with the telephone rate proceeding, involving the telephone rates in San Francisco Bay area, and later in Los Angeles on the Southern California Telephone Company. That work involved checking of the appraisal submitted by the Company and also an investigation and analysis of the operations of the Telephone Company in connection with the question of reasonable rates.

At the same time I was consulting engineer for the Department of Public Works of the State of California—I am not certain that it ran concurrently because it continued considerably thereafter—part of the time being employed by the State Engineer in connection with the Central Valley

Project to make investigations and reports on power phases of the Central Valley Project.

In the latter part of 1929 I was employed by the Division of Highways, particularly for traffic surveys in connection with the Hoover-Young Commission, who were then investigating the question of bridging San Francisco Bay. That work was carried on with the particular assistance of Mr. Davis, who has been associated with me since we started the telephone investigation, and Mr. Ward Hall, of the Railroad Commission, and with the assistance of Mr. Hunter and others of the Commission's staff. About the same time I was also employed by the Tax Commission to make a report on appraisal of the utility properties in California involved in the then question of taxation which dealt basically with the utilities paying taxes on a gross revenue basis. [fol. 678] This included telephone, electric, gas, railway, and other major transportation companies but did not include water utilities. In collaboration with Mr. Fankhauser, of the Commission, we made a report on value of the properties. It should be borne in mind that work was largely an office appraisal rather than any field appraisal and was made in cooperation with the Railroad Commission's engineering department.

During about the same time I was employed for a while with the California-Colorado River Commission, in connection with negotiations and various conferences dealing with the Boulder Canyon development. Since 1927 I have been in continuous employment, with the exception of one or two months, by the Bureau of Power and Light of the City of Los Angeles, dealing with valuation matters, rate matters and other matters in connection with their own electric utility and the condemnation of properties of the Edison Company and the purchase of properties of the Los Angeles Gas and Electric Corporation.

In addition my employment has included consulting work for a fairly large number of municipalities in the State, including San Diego, Burbank, Pasadena, San Bernardino, Riverside, San Luis Obispo, Tulare, Oakland, Palo Alto and certain of the northern cities; several of the irrigation and utility districts, including the Imperial Utility District, Sacramento Municipal Utility District, East Bay Municipal Utility District, the Madera Irrigation District and the Modesto Irrigation District.



have been more or less continuously employed by the State Engineer, Department of Public Works, in connection [fol. 679] with the Central Valley Project, handling mainly the work in connection with power phases of that. I handled further work for the State Toll Bridge Authority in the last two or three years in connection with the question of interurban train operation across the Bay Bridge, and made a report last year for the Golden Gate Bridge and Highway District dealing with the question of bus transportation across the Golden Gate Bridge.

From 1934 to 1936 I was employed as chief consulting engineer by the Federal Power Commission in connection with the National Power Survey and Electric Rate Survey covering the entire United States. The particular work, or much of this work, has been in connection with power, telephone and gas matters, dealing with valuation rates, and so forth.

In addition to that I handled certain work on bus service for the City of Pasadena in connection with the question of operation in that city and the traffic survey and studies for the Hoover-Young Commission in 1929 and 1930 dealing with the traffic, automobile and train traffic, across the Bay; the Golden Gate Bridge and Highway District bus traffic survey, and recently employment in connection with the competitive situation between the ferries and the bridge, for the Toll Bridge Authority, and the last two months for the American Toll Bridge Company in connection with the present investigation.

I think that covers fairly completely my experience.

Q. Will you now please turn to Exhibit 117, which is the reasonable historical cost of the Carquinez Bridge, and particularly to page 26. As I understand it, Mr. Ready, you [fol. 680] are responsible for items 4 to 13, inclusive, on that page?

A. That is correct.

Q. Will you please proceed in your own way and explain the various items, beginning with general and miscellaneous under item 4 and the sub-heads under that item?

A. Referring to item 4 on page 26, the first item, approach work and contributions, \$35,322, is that shown from the Company's books and is identical with that included by Mr. Mitchell in Exhibit 16, page 9. Toll house buildings; the same is true—that is, it represents the book cost and



was included by Mr. Mitchell, and I believe there is no dispute as to that. Item C, other buildings, represents the book cost as shown on page 8 of Exhibit 1 and includes the Carquinez Inn, the service and comfort station, also the Miller building and another building on the south side of the Carquinez Straits. I have included these items for the reason that the two houses on the south side are located on the right of way and, in fact, partially under the bridge, and would go with the bridge to the counties when the property reverted to the counties.

Q. Have you credited the revenue that comes from those houses?

A. Yes. And as to the Carquinez Inn, representing only a few thousand dollars, it also is within the 200-foot right of way that I believe would go with the property. And in addition it eliminates a number of complications in attempting to eliminate these items. And as the estimated rents from those buildings amount to \$2200, or about 20 per cent upon the capital involved, it seems unreasonable to exclude them from the set-up and, as a matter of fact, make [fol. 681] the showing better rather than poorer from the standpoint of the earnings of the properties. But, in effect, they are properties, as I see it, which would go with the bridge and are to a certain extent part and parcel of the bridge, and in dealing with the operations of the entire property it appears to me more logical to include them than to exclude them.

The next item of special equipment for toll house, bridge, and so forth, is made up of several items which were listed apparently on the Company's books and so reported in Mr. Coleman's exhibit and accepted by Mr. Mitchell as engineering.

Q. That was in Mr. Coleman's exhibit 1 at page 7, was it not?

A. Yes. Mr. Coleman correctly lists the items and they apparently were listed under engineering, referring to page 7 of Exhibit 1, one item of \$22,561.95, equipment. Now, our study of the costs to the Company indicates this represents scales used in connection with truck operation in weighing the trucks; the various equipment in the toll house for recording tolls, collections, and so forth; also the item of lighting equipment which was put upon the bridge itself and is not an engineering item but is the construction or equipment item. Another item which goes to

make up the \$24,307 includes the office equipment of \$1,002, as well as an automobile of \$724. The items totaled together make the \$24,307. They were erroneously included under "Engineering and inspection" and should have been included under capital, direct costs. They have been, therefore, transferred on this exhibit to their correct position.

[fol. 682] Q. It is always customary not to have physical items of that character included in the construction costs as distinguished from the construction overheads, is that correct?

A. That is correct. You can keep in mind that, I think all of us who worked on this realized the books of the Company were not kept as the old line utility books were kept, because they were not a utility. Some of those things are in the wrong place. And that is the case in point.

The next item of lands is given in great detail on page 28 and represents the payments for lands by the American Toll Bridge Company. One parcel, I believe parcel 5, is shown on page 28, and was still in the name of the Rodeo-Vallejo Ferry Company but is one of the parcels on which one of the main piers is located on the bridge and is an item of the cost of property purchased in connection with the bridge construction. Certain of the property is considerably more land than is directly occupied by the bridge but the salvage value is relatively minor and it seemed to me that the moneys actually spent in buying right of way, in a sense, should be included as the original cost of the lands which are a part of, you might say, the cost of the bridge. One or two items, I believe part of the Dos Rios lands, item 17, have been, and some of item 15, have been deeded to the State in connection with the highway but they represent the original investment which must be amortized, or should be amortized, over the life of the structure. And as we are not in any way assuming an increase in value because of the location of the bridge and its operation, and [fol. 683] the Company did not receive cash compensation for the deeding of certain of the properties to the State, I conclude that this item of \$66,834.62 is a reasonable and correct inclusion of the original cost as distinguished from any present value figure.

The item of \$7,632.59 listed as tide lands, Solano County, have not been included as cost of bridge lands. Certain of these tide lands are located directly under the bridge but the major portion of them extend considerable distances

on both sides and, although they might have been purchased either by the Rodeo-Vallejo Ferry Company or the American Toll Bridge Company for certain protection, I do not feel that I could logically include them in this capital account and, therefore, have excluded them.

Q. As a matter of fact, you didn't include them in any capital account?

A. I did not, no, but I wanted to explain that item which represents cost of land.

Following that, the item of furniture and fixtures is 80.762 per cent of the total item shown on the books and is the same as that included by Mr. Mitchell in his exhibit for that account.

Q. Why did you use the percentage of 80 plus?

A. The balance is allocated to the Antioch Bridge. That makes up the total of \$6,063,520.16, being those under items 4 to 6 plus the items testified to by Mr. Gerwick.

The next item, engineering and inspection, is the corrected item for engineering and inspection after deducting the \$24,307. In this case it represents approximately 6.03 per cent of the base cost and, in my judgment, should be used rather than a round figure of 6 per cent as suggested [fol. 684] by Mr. Mitchell.

Q. The difference between the two is very minor, anyway?

A. Yes. I mean the actual appeared to me to be the correct figure to include, as I found no reason to adjust any other figures as indicated by the records of the Company.

The next item of general overhead expense, I have included it at 5 per cent of the base cost owing to the fact from my own study of the history of the bridge and from the testimony of Dean Derleth I was convinced that a somewhat higher percentage should be allowed than would normally be allowed to cover the special contingencies or special difficulties and obstacles which the Company experienced in connection with its construction.

The item of preliminary expense, for generally the same reason, I have allowed  $3\frac{1}{2}$  per cent as compared to  $2\frac{1}{2}$  per cent, to reflect the problem and difficulties of the organization of the Company under those particular conditions which they faced at the time. There is then included the stock selling expense as an item of cost, as recorded by the Company's books, making a total of items 1 to 10 of \$7,093,387.84.

The next item, interest during construction, is covered by a subsequent exhibit and really should be referred to in order to have a clear understanding of that item.

Q. We will take up that exhibit a little later.

A. Following this page is page 27 in which I have set up in three parallel columns, in the first column the original cost as recorded, including items such as lands and furniture and fixtures which were not included in the totals [fol. 685] set up by Mr. Coleman on page 7 of his Exhibit No. 1. Otherwise the figure is the same. Then in column 3 is a summary of the estimated historical—or reasonable historical cost as shown on page 26, and in column 2 the original cost adjusted for one item, that is, the item of interest during construction, in which the percentage of 14.745 per cent of the base item, item 11, has been added to place the interest during construction on the same basis as determined from the analysis of the Company's books. This does not include any adjustments of the book costs as set forth, except for interest during construction.

Page 28 I have already referred to, the first item being the computation of furniture and fixtures and the second item the break-down of lands and rights of way. Page 29 and 30 are a tying together of the various figures with the total set forth in Mr. Coleman's exhibit. It is more to give a break-down and to indicate certain of the figures which were transferred from general engineering to construction.

Q. Now, Mr. Ready, will you please refer to Exhibit No. 118, which is the estimate of the cost of reproducing the Carquinez Bridge new, and particularly tell us about page 25?

A. On this page, again, the figures from item 4 to item 13 have been included by myself as distinguished from Mr. Gerwick. Under item 4, general and miscellaneous, the approach work and contributions have been included at the original reported cost. Items B and C, toll house building and other buildings, have been included in round figures at the approximate estimated cost to build as of 1927. Item D [fol. 686] is the same item of special equipment I have referred to before as formerly reported in the Company's books as overhead when it should have been construction. Item 5 represents lands and is the same figure as previously used, no attempt being made to appraise the lands or determine what might be the cost of buying the rights of way,



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nor reason to assume the bridge was in there and the highway in there and then they start to build the bridge, which is somewhat of an absurd assumption when you assume the land has a value with the highway and the bridge constructed. Therefore, I have included the land as originally purchased. Furniture and fixtures is the same figure as used in the historical cost. In this estimate I have used 6 per cent for engineering and inspection for the reason that the whole figure is an estimate in which the actual costs would not be available and 6 per cent is a fair figure at that time, in my judgment, to apply for engineering costs, and similarly under general overhead I have used 4 per cent. If we assume that the Bridge Company could build the bridge at that time, it must be kept in mind that much of the opposition and interference and trouble that occurred in 1926 regarding bridging any waterway had been eliminated through the experience and acquiescence by the interest of the people in the bridging of the Bay and the Golden Gate Bridge, and the building of a bridge with 135-foot clearance across the Carquinez Straits would not involve the same difficulties and problems that it did in 1926. Preliminary expense and organization I have included at  $3\frac{1}{2}$  per cent to cover not only organization but any stock expenses that were incurred, as compared with  $2\frac{1}{2}$  per cent plus an [fol. 687] amount—or  $3\frac{1}{2}$  per cent plus stock expense in the historical. In my judgment, if a private company could build the bridge or could be assumed to have built the bridge and had a franchise sufficient to justify building the bridge,  $3\frac{1}{2}$  per cent would be a reasonable allowance for organization and stock selling expense.

Interest during construction has been computed on a different basis than that used in connection with the historical cost. It was assumed that the bridge would be constructed over a total of approximately a 3-year period of which there would be 6 months prior thereto for all the preliminary organization; that money would cost 7 per cent, as will be indicated hereafter, and that the cash in the bank would earn one-half of one per cent. I made some inquiry as to the reasonableness of the one-half per cent and also checked with the Company's books. During the period of 1936 and 1937 the Company received on relatively small deposits one per cent in a few cases. In most cases where they had on deposit over \$25,000 or \$30,000 the interest rate which it received was one-half of one per cent, and in one case one-

quarter of one per cent. So with that information available I used one-half of one per cent as a credit for money in the bank. A general approximate program of construction was laid out, or of expenditure was laid out, and it was assumed that out of a total of \$8,000,000 which we took as a base total expenditure, one-half million dollars would be raised by the promoters at the beginning of their promotion, which would be represented in a sense by stock money; that at the end of the first 6 months that the balance, making a [fol. 688] total of 40 per cent of the total money, would be raised by sale of stock, and that at the end of 1935 the balance of the money would be raised through the sale of bonds, so that the time or the period that entire money would be available would be less than the entire period of construction, or promotion and construction. On that basis the interest during construction on a simple interest basis, worked out 16.55 per cent, and on a compound interest basis 17.77 per cent. And as a result I adopted 17 per cent for the interest during construction on that basis.

ELLIOTT McALLISTER, a witness called on behalf of American-Toll Bridge Company, being first duly sworn, testified as follows:

Direct examination:

Mr. Thelen: You are assistant cashier of the Bank of California, I believe, Mr. McAllister?

A. Yes, sir.

Q. And how long have you been connected with that bank?

A. Almost 18 years—17½ years.

Q. Are you familiar, Mr. McAllister, with the rates of interest paid by the Bank of California in San Francisco during the years 1936 and 1937?

A. Yes, sir, I am.

Q. Are you also familiar in general with the rates of interest paid by other banks in San Francisco during those same years?

A. Yes.

Q. I will ask you, Mr. McAllister, whether you are familiar with the rules and regulations of the Federal Reserve system with reference to the rates of interest which banks, which are members of that system, were authorized by the

system Board of Governors to pay following January 1, [fol. 689] 1936?

A. Yes, I am familiar with that.

Q. Do you know, Mr. McAllister, whether or not a private corporation, not operated primarily for religious, philanthropic, charitable and similar purposes, could have made a savings deposit in any of the San Francisco banks at any time from January 1, 1936, to date?

A. No, the regulation of the Federal Reserve Board prohibits corporations created for a profit from having savings accounts.

Q. Now, Mr. McAllister, let us assume that a private corporation having, say \$6,000,000 available, had come to the Bank of California shortly after January 1, 1936, and had stated that it desired to use this money from time to time for the payment of bills on the construction of a bridge in the years 1936 and 1937 and that in the meantime it desired to secure such interest as was possible on the unexpended money; and suppose that this corporation had asked the advice of your bank as to how to secure the largest available interest rate on the unexpended portions of that money; what advice would you have given them, Mr. McAllister?

A. We might have taken a small part of it on a fixed deposit, on which we would have allowed interest at one-half of one per cent. That would have been the maximum we would have considered, and I think we would have only wanted a small part of the deposit. That probably would also be contingent on an active balance at the same time.

Q. That is, that would be an active balance of moneys on which no interest would be paid?

A. On which no interest would be paid.

Q. Do you know what the practice of the larger number of [fol. 690] the San Francisco banks was on that same subject during that same time?

A. Very much the same. I can't speak for all of them, but by and large money rates were very easy and banks had surplus deposits they didn't know what to do with. They had to turn to the short term government market, which was netting them anywhere from .15 of one per cent to .40 of one per cent, or turn to the bankers' acceptance market on which the average rate during 1936 was .15 of one per cent, and the rate stayed there until the fall of 1937 and then it advanced to about 7/16ths of one per cent. But rates were

very low and we had a very hard time to place surplus deposits, hard time handling them.

Q. It is a fact, is it not, that there might have been one or two banks in San Francisco which, on amount of money not totaling as much as \$6,000,000, might have paid slightly more than the percentages to which you have testified?

A. Yes, I believe so; yes, that is probably so, but it would be subject to private negotiation. Public funds are paying one-half of one per cent and city deposits or state deposits were receiving—well now, let me be more specific: On city deposits I understand they are receiving one-half of one per cent. On State deposits the law provided for 2 per cent interest until the last Legislature, at which time the minimum was changed to one per cent. That was done because it was impossible to place money at 2 per cent. And when those deposits were taken there were other compensating balances on which no interest was paid.

Q. Suppose this particular concern, Mr. McAllister, had turned to the New York banks to see whether they could put the money there, what would they have found, do you happen to know?

A. Yes, the New York banks had an even more difficult problem than they did out here in San Francisco, and I doubt if the treasurer of the American Toll Bridge Company could have placed any money on deposit in New York banks. I don't think they would have taken it and paid interest on it.

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LESTER S. READY, recalled.

Direct examination resumed:

Mr. Thelen: Mr. Ready, as I remember, we had completed our testimony with reference to Exhibit No. 113. Would you like now to proceed with Exhibit 119, which is the exhibit dealing with the subject of interest during construction?

A. Yes.

Q. May I ask you one or two additional questions about other columns there. The column headed "Interest during construction,  $\frac{3}{4}$  of one per cent", that seems quite clear; that is one-twelfth of 9 per cent, of course.



A. Analysis of the cost of money to the American Toll Bridge Company, as indicated by Exhibit 1, Mr. Coleman's exhibit, and by studies which will show up later, shows a cost of money to the American Toll Bridge Company of practically 9 per cent, and in this computation interest during construction is capitalized at 9 per cent on amounts expended—you might say plus 9 per cent on moneys on deposit, less 3 per cent on moneys on deposit, which becomes 9 per cent on moneys expended and 6 per cent on moneys deposited.

Q. Now, if you will please move forward toward the beginning of the exhibit, to Table 2, the figures there shown are [fol. 692] the figures shown on Table 3 but arranged by 6-month periods, are they not?

A. That is correct with the exception of 1927, when only 5 months are included. The figures shown on Table 2 are the totals of the 6 months' period and then to those figures shown in columns 2, 3, 4, 5, 6 and 7 have been added columns 8 and 9 to compute the interest during construction on the compound interest basis of 9 per cent for the period in question. That is, on simple interest the total interest during construction was \$986,230, and on compound interest at  $4\frac{1}{2}$  per cent every 6 months it would amount to \$1,057,050, showing a percentage of the base capital of 15.9 per cent on simple interest and 17 per cent on compound interest.

So that the interest during construction, as a percentage of the total capital, on a simple interest basis would be 13.7 and on a compound interest basis 14.7—I believe the exact figure is 14.745 per cent of the base capital, of the moneys expended up to the—I mean the total moneys expended, exclusive of interest during construction. That 14.745 per cent was thereafter applied in determining the reasonable historical reproduction cost of the bridge.

Q. In other words, that is the percentage which you use, isn't it?

A. Yes, that is correct.

Q. 14.7?

A. Yes. Now, for comparative purposes I have set forth in the next item the interest during construction computed by Mr. Mitchell on the basis of his Exhibit 16, where he assumed 8 per cent interest on bonds, no stock, and a 3 per



cent interest earned upon the balance. That results in 19.1 per cent as a basis as compared with 14.745 set forth here.

[fol. 693] Q. Is it a fact, then, that the amount which you have included for interest during construction in your estimate is considerably less than the amount which Mr. Mitch all finally uses?

A. It is less than what he finally used on a much less base. The reason it is different, or one of the main reasons, is that though the higher interest rate has been used the Company did not have on deposit, did not sell stock or bonds ahead of its expenditures until 1925 and all that is chargeable to interest during construction is the interest on money they spent during that first year and a half approximately, in which they spent nearly \$1,400,000. Had they sold stock, say enough to net \$1,500,000 to start with, then there would be a fairly large interest during construction on moneys on deposit and not used. This is, I feel, the correct interest during construction, applicable to the property on a historical basis, with the one possible exception that we have computed a figure which charges up part of the interest on moneys in bank in excess of the credit for interest we earned, to the Antioch Bridge, while the money was really used largely for the Carquinez Bridge.

Q. Will you now please turn to Exhibit 120, which is the reasonable historical cost of the Antioch Bridge?

A. Yes. In this exhibit, the last page, Mr. Gerwick has testified as to items 1, 2 and 3. Item 4 represents the matter of lands. The Company's books up through 1936 showed \$1500 for land. In 1936 or first part of 1937 they purchased some additional lands at a cost of \$295, and that has been added. The records do not show what was paid for these specific lands in all cases. However, to check the \$1500 we got the assessed valuation by the counties of this [fol. 694] land, and that multiplied by 2 approximated \$1500, to which was added the \$295 of purchase in 1937, I believe it was. Furniture and fixtures, item 5, is the balance of the total furniture and fixture account which was allocated to the Antioch, the other amount of some approximately 80 per cent being allocated to the Carquinez Bridge. Item 6 is a total of items prior thereto. I have in this estimate set up 7 per cent for engineering and inspection, compared with 6 per cent on the other bridge, for generally the same reasons as I expressed for other items in the Carquinez Bridge estimate. The bridge was constructed at

the time when—was one of the first of that type of bridges to be built here in the west. There were some complications for a private company. They made designs for a low level bridge and later had to re-design it for a high level bridge and, in my judgment, 7 per cent, rather than 6, would be reasonable for this item—a considerably less item in amount than is shown on the Company's books.

General overhead expense is the same percentage, 5 per cent, as was allowed for the Carquinez Bridge which was under construction at the same time, and although they had possibly more difficulties with the Carquinez Bridge than the Antioch, relative to cost, I would judge they had about the same preliminary expense; organization,  $3\frac{1}{2}$  per cent, the same as I testified to before in connection with the Carquinez Bridge; stock selling expense included as shown by the books.

Item 10 is the purchase of the Lauritzen Ferry franchise, for which a payment of \$50,000 was made as shown by the books, and represents in a sense a purchase of, or a clear-[fol. 695] ance of the right of way for operations of the bridge by the purchase of an otherwise competing ferry. This same item was included under general expense by Mr. Mitchell in his estimate of historical and, I believe, reproduction cost new.

Q. Exhibit 17, page 5, also page 3 of the same exhibit.

A. Yes, as shown in Exhibit 17, page 5. This item was included by Mr. Mitchell under general expense. Mr. Mitchell's total per cent, other than that, I believe is  $4\frac{1}{2}$  compared with the figure of 5 per cent used here. Interest during construction, which is the last item he computed, is estimated at 8.3 per cent. In this case we didn't go through the Company's records as we did in the case of the Carquinez Bridge to get the expenditures month by month. But the bridge was started in June—no, started in March, 1924. The franchise was granted in June, 1923, and we laid out an estimate of expenditures which would approximate the item of organization and preliminary engineering by the time the construction period started, starting the organization and preliminary work in July, 1923, and estimating the total expenditure up to March of \$120,000, the expenditure by the end of 1924 of \$520,000 and a total expenditure for the basis of computing the rate of interest of \$1,500,000 at the end of 1924, and I computed interest then on the basis of  $\frac{3}{4}$  of a per cent for a month or 9 per cent per annum or

moneys expended up to each month, and then added an amount of \$11,528 which represented the amount of interest represented the amount of cost of money in excess of the [l. 696] credit of 3 per cent, or 6 per cent upon the bank balance, for the last 6 months of 1925, which was the period in which money was available from bonds and in which money was earned on deposit in the banks. That totaled, against the million and a half expenditure, \$139,403 on simple interest and \$144,458 on compound interest, or on 9.3 per cent in the first case and 9.64 per cent in another. This was the money spent up to the date the bridge was put into operation. Subsequent to that date approximately \$240,000 was expended and no interest during construction has been included on that amount. The result of it is that the 9.64 per cent interest on moneys spent up to the date of opening of the bridge represented 8.3 per cent on the total moneys expended on the bridge. And the 8.3 per cent was then applied to the base cost before interest during construction in Exhibit 120, giving \$122,453. This is slightly less than the figure used by Mr. Mitchell on a somewhat lower amount, due to the fact that in general no interest has been computed on moneys except those actually spent, from the start of the bridge up to within 6 months of its completion. That it was financed in a sense from hand to mouth and if there was any interest due the promoters they didn't collect it out of these expenditures.

Q. Does that complete Exhibit No. 120?

A. Yes.

Q. Would you turn now, please, to Exhibit 121; which is estimate of reproduction of the Antioch Bridge new?

A. Yes.

Q. And to the last page of that exhibit.

A. In this case the item of lands and furniture and fixtures shown on the last page are the same as those set forth on the historical basis. Engineering and inspection has been taken at 6 per cent, and general overhead expense 4 per cent. This bridge in 1936 and 1937, if it were built at all, would not encounter the same opposition and same difficulties in the sense that it did in 1924 and 1925.

I have used as more or less applicable to engineering 6 per cent and general overhead of 4. Again preliminary expense has been included as I did in the reproduction cost of the Carquinez Bridge as 3½ per cent to cover both organization and any cost of stock selling. Purchase of the

ferry system franchise has been included at the price originally paid for it. Interest during construction in this case has been computed in general on the same basis as it was for reproduction of the Carquinez Bridge on the assumption that the moneys would be made available through stocks and bonds and that that would cost 7 per cent per annum, that the money would cost 7 per cent per annum and the credit of one-half of one per cent on bank balances would be deducted. On this basis the interest during construction came out 10.1 per cent, and I have used in this computation 10 per cent for interest during construction. I believe that completes that exhibit.

Mr. Thelen: Having completed these particular exhibits, if it is agreeable to the Commission I would like to ask Mr. Ready to step aside for a while and put on a number of other witnesses who will take only a short time each.

Commissioner Riley: That is agreeable.

[fol. 698] CHARLES DERLETH, JR., recalled.

Direct examination resumed:

Mr. Thelen: At the last hearing Mr. Rowell asked us to present a copy of the War Department permit first containing reference to the construction of fenders. I will ask you, Mr. Derleth, whether you recognize the document which I am now handing you as a photostat copy of that permit?

A. This is a photostatic copy of the first permit approved by the Chief of Engineers on the 16th of April and by the Secretary of War on the 17th of April, 1923.

Mr. Thelen: We will offer this document in evidence and ask that it take the next exhibit number which I think is 122.

Commissioner Riley: 122 is correct. It will be received as Exhibit 122.

Mr. Thelen: I may at this point draw attention to the fact that the language relating to a fender is contained in paragraph 4. Now, I will ask you, Mr. Derleth, whether you have had prepared a number of copies of letters passing between the War Department and the American Toll Bridge Company and also a few passing between the Department of Commerce, Lighthouse Service, and the American Toll



ridge Company, referring to a temporary fender, permanent fender and protection by lights, fog horns, and so on, for navigation?

A. These are exact copies of 27 pieces of correspondence between the American Toll Bridge Company, the War Department engineers and the officers of the Lighthouse Service of the United States. These documents refer historically to the development of the permanent fender and its construction and are the issued orders for temporary protection preceding the construction of the permanent fender.

Q. Please state whether or not in the latter part of the series of letters are also a number of letters setting forth requirements of the Department of Commerce, Lighthouse Service, relative to lights, fog horns and other protective devices to give warning to navigation?

A. In the latter portion of the series of 27 letters there are instructions and orders of the Lighthouse Service for lights, fog signals, and so forth, for the various portions of the bridge and particularly the fender.

Mr. Thelen: I would ask, if the Commission pleases, that this entire set of letters be together introduced and take next exhibit number, 123.

Commissioner Riley: They will be received and noted as exhibit 123, consisting of letters from the War Department.

Q. Right at that point, Mr. Derleth, will you make that point clear? In other words, there seems to have been doubts in the minds of some people as to whether it would not have been possible to move right in from the beginning with the permanent fender system, entirely regardless of the temporary fender system, and thus to have eliminated the expense of the temporary fender system. And I would be obliged if you would direct your attention to that point and state, if it is a fact, why that sort of thing is not at all feasible.

ol. 700] A. The American Toll Bridge Company could not build a permanent fender until the War Department had approved one and ordered one. The War Department, as the records clearly show, was not ready in those early pioneer days to decide upon a fender, floating fender versus permanent fender. The whole issue was unique and a pioneer one. No fender of that type had ever before been built in



such deep water and on such soft ground and in swift currents and in the presence of ocean-going ships.

Q. As you look back on the situation now, Mr. Derleth, do you think it was at all in the cards to have constructed a permanent fender at the outset without incurring the temporary fender expense?

A. No, the ships were necessary. Even if the later bridges in San Francisco, such as the Bay Bridge, the center anchorage of the Bay Bridge had temporary fenders around it in the form of docks and floating equipment. We had to build and install temporary fender system in order to expedite the work and let the steel erection proceed, otherwise the whole period of construction would have been extended.

JOHN T. WHITMIRE, a witness called on behalf of the American Toll Bridge Company, being first duly sworn, testified as follows:

Direct examination.

Mr. Thelen: You are the secretary of the American Toll Bridge Company?

A. Yes.

Q. And have been so for how long?

A. About the last 11 years, since 1926.

Mr. Thelen: Mr. Rowell, you asked for a copy of whatever contract the American Toll Bridge Company had with [fol. 701] the Raymond Concrete Pile Company, and I am presenting this witness as secretary of the Company to identify the document.

Mr. Rowell: All right.

Mr. Thelen: I will ask you first if you will look at what purports to be an agreement of January 24, 1925, between the American Toll Bridge Company and the Raymond Concrete Pile Company, and will ask you whether or not that is a true and correct copy of a record from your office?

A. Yes, it is an exact copy of it; it has been compared and is accurate.

Mr. Thelen: We will offer this contract in evidence and ask that it take our next exhibit number, which I believe is 124.

Commissioner Riley: 124; so received and marked.

Mr. Thelen: I will ask you also, Mr. Whitmire, as to whether you found among the records in your office a copy of a letter dated January 29, 1925, from the American Toll Bridge Company to the Raymond Concrete Pile Company?

A. Yes.

Q. Referring also to relations between the two companies?

A. Correct, yes.

Q. And is the document which I hand you now a true and correct copy of this letter which you found in your records?

A. Yes, it is.

Mr. Thelen: We will ask that this letter to which reference has just been made be introduced and marked Exhibit No. 125.

Commissioner Riley: It will be received and marked as Exhibit 125 of respondent.

[fol. 702] Mr. Thelen: Now, I will ask you, Mr. Whitmire, whether you were able to find any other contract, in the form either of a formal agreement or of a letter agreement, between those two parties?

A. No other, no, sir.

Mr. Thelen: That is all, thank you.

Mr. Rowell: No questions:

J. WILBUR HAINES, a witness called on behalf of the American Toll Bridge Company, being first duly sworn, testified as follows:

#### Direct examination:

Mr. Thelen: Mr. Haines, you are a partner of Haskins & Sells, are you not?

A. Yes, sir.

Q. And a certified public accountant?

A. In California, among other States, yes.

Q. We won't ask you to give the entire list; as long as you are in California we will be satisfied. What familiarity have you had with the affairs of the American Toll Bridge Company?

A. I have been in charge of the auditing of the accounts since my connection with the San Francisco offices of my firm in 1934. That means I would handle the semi-annual audits,

as the case may be, for 1934, 1935 and 1936, which have been conducted under my supervision, and also the registration of securities in May, 1935.

Q. Have you before you, Mr. Haines, a copy of Railroad Commission Exhibit No. 22 prepared by Mr. Coleman?

A. I have such a copy, yes.

Q. Have you observed in connection with that document, Mr. Haines, that the exhibit makes no allowance for dividends during the 10 years in which none were declared?

[fol. 703] A. There is no such allowance in it.

Q. And have you observed that the exhibit deals merely with assumed average situations over the next 10 years?

A. Yes.

Q. I will ask you also whether you have noted that the exhibit does not undertake to show how much cash will actually be required during any one of those next 10 years?

A. That is right.

Q. I will ask you also whether you have noted that the amount shown on that exhibit as being required for interest on and amortization of bonds is averaged over 10 years, whereas the life of the bonds would terminate some time in 1945?

A. Yes.

Q. Please state whether or not the spreading of that total amount needed for amortization and interest over a 10-year period yields an average figure which is substantially less than by taking the actual life of the bonds which, as I understand it, terminate on August 1, 1945?

A. Well, it is considerably less for a number of those years, yes.

Q. However, as to the last year the situation would be a little different?

A. The last year it would be less than that, that is, the year 1945.

Q. Yes. Now, I will ask you as to whether you have noted that, under the head of "Deduct, resources", in that exhibit, there are listed certain items such as prepaid expense, which are not cash and can not be converted into cash?

A. Well, they could be converted into cash but it would immediately have to be reinstated under going concern status and they will eventually die, but not at the beginning [fol. 704] of this period. They might conceivably become less, as insurance charges and taxes are less at the end of the life of the bridge, but not at the beginning of the period.

Q. Now, I will ask you, referring further to that exhibit, whether you have noted that under the head of "Deduct, resources", are listed certain book values which are not cash items, such as, for instance, the Rodeo-Vallejo Ferry?

A. Yes.

Q. I will ask you particularly whether you noted under the head of "Annual income necessary" that the allowance for income taxes shown on the exhibit is only \$30,000?

A. Yes.

Q. I will ask you as to whether you have computed the Federal income tax which would be necessary for each of the remaining  $10\frac{1}{2}$  years of the franchise under the conditions and assumptions to which I shall shortly refer?

A. Yes, they have been computed.

Q. What did you find the average amount required for Federal income tax during this period to be?

A. Well, it would be more nearly \$120,000 over the  $10\frac{1}{2}$  year period, an average of \$120,000 a year, considerably more than that in certain of the years and less in a few of them.

Q. That average would be at least \$90,000 more than the allowance on Commission's Exhibit 22, would it not?

A. Yes, that is right.

Q. I understand there are also other items in this Exhibit 22 as to which you may desire to comment a little later?

A. Yes.

[fol. 705] Q. Now, have you read Mr. Coleman's very interesting testimony in which he undertook to apply the wasting asset theory to the facts of our case?

A. Yes, I have read that.

Q. Referring further to the wasting asset theory, I will ask you as to whether you agree that the logical application of that theory requires the return of the investment during the life of the asset, plus a fair interest and/or dividend on that portion of the investment which from time to time has not as yet been returned?

A. Yes, I can accept that definition.

Q. Now, I will ask you as to whether you have undertaken to apply the wasting asset theory to the affairs of the American Toll Bridge Company so as to show the situation in a complete and logical way on a cash basis during each of the remaining years of the Company's franchise?

A. Yes, I have tried to do that.

Q. In making such computation you started, I take it, with the situation as of December 31, 1937?

A. Right.

Q. And, as I understand it, you have undertaken to show the situation separately and in appropriate detail as to each of the remaining years of those franchises?

A. That is right.

Q. You have prepared an exhibit, have you not?

A. Yes, I have prepared an exhibit.

Mr. Thelen: I have already given a copy to the Commissioner. We ask that this exhibit, entitled, "Estimate of cash requirements by years for period from January 1, [fol. 706] 1938, to January 30, 1948," be introduced and marked Exhibit 126.

Commissioner Riley: It will be so received and marked 126.

(Here follows Exhibit No. 126—pages 1, 2, 3, 4.)

[fol. 707]

COMPANY EXHIBIT No. 126

Estimate of Cash Requirements by Years for the Period  
from January 1, 1938 to June 30, 1948

American Toll Bridge Company

Haskins & Sells,

Certified Public Accountants

Alexander Building, 55 Montgomery Street, San Francisco

January 18, 1938.

American Toll-Bridge Company, Vallejo, California.

DEAR SIRs:

American Toll-Bridge Company has for a number of years operated the Carquinez and Antioch bridges under franchises which expire, respectively, on March 7, 1948 and July 5, 1948. These bridges were placed in service on or about May 22, 1927 and January 1, 1926, respectively. Recent California legislation has placed the Company's operation of these bridges under the supervision of the Railroad Commission of the State of California.

In a rate proceeding now in course before the Railroad Commission consideration has been given to the determina-



tion of estimated amounts of cash necessary completely to liquidate the Company by, say, June 30, 1948, viewing the Company as a wasting asset venture. It should be noted that the Company paid no dividends to its stockholders subsequent to the time the bridges were placed in operation until the calendar year 1936, and that in the years 1936 and 1937 dividends were paid in the aggregate respective amounts of eight cents and thirteen cents per share; dividends at the rate of eight cents accumulated for the period from June 1, 1927 to December 31, 1937, based on 3,776,873 shares, less the amount of dividends paid in the years 1936 and 1937, would amount to approximately \$2,404,600.

We have at your request prepared, and attach hereto, a Statement of Estimated Cash Requirements, By Years, on Bases Set Forth Below, for Period From January 1, 1938 to June 30, 1948.

[fol. 708] The amounts used in the attached statement are based on the following information and data:

Operating and general expenses are amounts as estimated by Mr. Lester Ready, Consulting Engineer.

Interest on funded debt and funds provided for retirement of principal together with premiums thereon are in accordance with the provisions set forth in the indenture under the first mortgage 5% serial bonds dated August 1, 1935. The principal amount to be retired at December 31, 1937, \$3,278,500.00, represents the series C and D bonds outstanding, \$3,600,000.00, less face amount of treasury series D bonds, \$133,500.00, and cash in retirement fund, \$188,000.00, at that date. The total interest requirements shown for 1938 represent the interest expense charge of \$181,491.00 applicable to net bonds outstanding during that year, less cash of \$93,060.00 in the interest fund at December 31, 1937. Obviously, cash requirements for 1938 would be greater than the amount of \$1,363,000.00 shown were it not for the application of the cash funds on hand at December 31, 1937.

Taxes have been computed on the basis of the Federal, state, and local acts now in effect.

Provision for retirement of capital stock has been made on the basis of a period of ten and one-half years, using 3,776,873 shares as the total par amount to be retired; such amount includes the par value of 57,280 shares of treasury stock in dispute. No consideration has here been given to

the feasibility of such retirement of capital stock under the Company's charter.

The bases of the dividend computations are as set forth in the statement.

Effect has not been given in the attached statement to any of the following items:

Net current assets of approximately \$20,000 as shown by the Company's balance sheet as of December 31, 1937, after taking into consideration accrued Federal tax liabilities of approximately \$108,000 for the year 1937;

[fol. 709] Any amounts which may ultimately be realized from disposal of the Company's investments in The Rodeo-Vallejo Ferry Company, Martinez-Benicia Ferry and Transportation Company, and American Toll-Bridge Company of California;

Dividends which may be received;

Prepaid expense items of approximately \$102,000 as of December 31, 1937.

Yours truly, Haskins & Sells.

(Here follows 1 paster, folio 710)

State of Estimated Cash Requirements

	Total	1938	1939
Operating and General Expenses .....	\$2,556,612.00	\$259,745.00	\$259,745.00
Debt Service:			
Interest .....	752,214.00	88,431.00	162,550.00
Principal provided for retirement .....	3,278,500.00	245,167.00	400,000.00
Premiums on bonds called .....	50,538.00		6,600.00
Taxes:			
On gross operating revenue (2%) .....	279,680.00	27,260.00	33,300.00
California state franchise .....	223,543.00	24,831.00	13,890.00
Federal capital stock tax .....	42,488.00	3,939.00	3,900.00
Federal taxes on income .....	1,288,226.00	50,961.00	52,130.00
Pro-Rata Retirement of Capital Stock .....	3,776,873.00	359,700.00	359,700.00
Dividends at 8% on Balance of Capital Stock at Beginning of Each Period .....	1,733,774.00	302,150.00	273,370.00
Total .....	\$13,982,448.00	\$1,362,184.00	\$1,665,330.00
Stated in Round Amounts .....	\$13,984,000.00	\$1,363,000.00	\$1,665,000.00
Net Dividends at 8% for Period from June 1, 1927 to December 31, 1935, Based on 3,776,873 Shares and Spread Over Ten and One-half Years .....	2,404,600.00	229,000.00	229,000.00
Total (Without Considering Additional Taxes Required to Net the Amount Set Forth Above as Covering Back Dividends) .....	\$16,388,600.00	\$1,592,000.00	\$1,894,000.00

- Notes.—1. The amounts used in the above statement have been determined on the following bases:
- Operating and general expenses are amounts as estimated by Mr. Lester Ready, Consulting Engineer.
  - Interest on funded debt and funds provided for retirement of principal together with premiums thereon are in accordance with the terms of the bonds.
  - 1938 interest expense charge of \$181,491.00 applicable to net bonds outstanding during that year, less cash of \$138,225.00.
  - Taxes have been computed on the basis of the Federal, state, and local acts now in effect.
  - Provision for retirement of capital stock has been made on the basis of a period of ten and one-half years, using the bases of the dividend computations as set forth above in the statement proper.
2. Effect has not been given in the above statement to any of the following items:
- Net current assets of approximately \$20,000 as shown by the company's balance sheet as of December 31, 1937.
  - Any amounts which may ultimately be realized from disposal of the company's investments in The Rodeo-Vallejo.
  - Dividends which may be received.
  - Prepaid expense items of approximately \$102,000 as of December 31, 1937.
3. The above statement should be considered only in conjunction with the accompanying comments.

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## American Toll-Bridge Company

State of Estimated Cash Requirements, by Years, on Bases Set Forth Below, for Period from January 1, 1938 to June 30, 1948

Year Ending December 31										Six Months Ending June 30, 1948
1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	
\$259,745.00	\$259,745.00	\$260,075.00	\$260,075.00	\$256,275.00	\$241,205.00	\$241,205.00	\$241,205.00	\$241,535.00	\$241,535.00	\$54,012.00
88,431.00	162,550.00	144,833.00	122,280.00	98,198.00	72,715.00	45,902.00	17,325.00			
245,167.00	400,000.00	410,417.00	437,500.00	463,333.00	487,500.00	519,583.00	315,000.00			
	6,663.00	10,000.00	10,625.00	11,375.00	11,875.00					
27,260.00	33,300.00	32,900.00	32,800.00	32,600.00	32,080.00	31,880.00	24,200.00	14,200.00	13,240.00	5,240.00
24,831.00	13,899.00	26,067.00	25,527.00	26,804.00	28,084.00	29,315.00	31,131.00	17,837.00	25.00	25.00
3,939.00	3,962.00	4,000.00	4,099.00	4,258.00	4,478.00	4,771.00	4,762.00	4,327.00	3,892.00	
50,961.00	152,138.00	152,804.00	170,873.00	190,000.00	208,000.00	231,215.00	116,474.00			75,761.00
359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	359,700.00	17,873.00
302,150.00	273,374.00	244,598.00	215,822.00	187,046.00	153,270.00	129,493.00	100,718.00	71,942.00	43,166.00	7,195.00
\$1,362,184.00	\$1,665,331.00	\$1,645,394.00	\$1,639,281.00	\$1,629,589.00	\$1,603,907.00	\$1,598,042.00	\$1,210,515.00	\$709,541.00	\$661,558.00	\$262,106.00
\$1,363,000.00	\$1,665,000.00	\$1,645,000.00	\$1,640,000.00	\$1,630,000.00	\$1,604,000.00	\$1,593,000.00	\$1,210,000.00	\$710,000.00	\$662,000.00	\$262,000.00
229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	229,000.00	114,600.00
\$1,592,000.00	\$1,894,000.00	\$1,874,000.00	\$1,860,000.00	\$1,859,000.00	\$1,833,000.00	\$1,822,000.00	\$1,439,000.00	\$939,000.00	\$891,000.00	\$376,600.00

Notes:

Consulting Engineer.

with premiums thereon are in accordance with the provisions set forth in the indenture under the first mortgage 5% serial bonds dated August 1, 1935. The principal amount to be retired at December 31, 1948, less face amount of treasury series D bonds, \$133,500.00, and cash in retirement fund, \$188,000.00, at that date. The total interest requirements shown above for 1938 represent the interest during that year, less cash of \$93,060.00 in the interest fund at December 31, 1937.

in effect.

of ten and one-half years, using 3,776,873 shares as the total par amount to be retired; such amount includes the par value of 57,280 shares of treasury stock in dispute, proper.

sheet as of December 31, 1937, after taking into consideration accrued Federal tax liabilities of approximately \$108,000 for the year 1937.

Investments in The Rodeo-Vallejo Ferry Company Martinez-Benicia Ferry and Transportation Company, and American Toll-Bridge Company of California.

ing comments.







[fol. 711] Mr. Thelen: Now, Mr. Haines, would you like to proceed in your own way to advise the Commission as to what you did in the preparation of this exhibit, or would you rather have me ask you questions from time to time?

A. Well, I imagine it might be best for me to tell you what is in my mind first and then answer questions that may occur to you to ask.

Q. Well, if you will kindly do that.

A. We have devoted the introductory two and a fraction pages to an explanation of the reasons and the basis of the computations included in the statement and have shown the fundamental portion of those bases as footnotes or the statement itself, which has been prepared on the basis of cash requirements by years to the assumed end date, June 30, 1948, as the Company would have to be completely liquidated by that date. By complete liquidation I mean, of course, the paying off of the capital stockholders at par, plus an assumed rate of 8 per cent in annual dividends based on the number of shares outstanding at the beginning of each period, which would be 4 per cent in 1948, of course. I have used as operating and general expenses the figures given to me by Mr. Lester Ready, and for amounts required under "Debt service" I have used the amounts fixed by the terms of the indenture itself, treating the series C bonds as an issue to be retired in August of 1938, and the series D bonds as if they were practically a serial issue meeting the sinking fund dates, plus premiums on series D bonds. Since bond dates are August we have naturally taken the cash [fol. 712] provisions, seven-twelfths of the first part of the year and five-twelfths of the second half, so that the amounts shown against principal provided for retirement in any one year will not be the amounts shown to be retired in that year; it is merely the cash that would have to be provided in that year. Similarly with the interest accruals. I want to direct attention to the fact that in 1938, whereas we show a cash requirement of \$88,431 for interest, the expense item for the year is approximately \$93,000 more than that. We have reduced the expense item to this figure of \$88,000 by the amount of cash in the interest fund at December 31, 1937, as shown by the balance sheet submitted to us by the Company. Similarly with the principal required for the retirement in 1938. There will be more bonds than 245,167 actually retired in 1938. That amount has been

retired by the cash balance of \$188,000 in the retirement fund for that issue. We have similarly reduced the series D, later issue, prorata by \$133,500 face amount of series D bonds in the treasury at December 31, 1937. They naturally could not be applied against series C. The premium on bonds called I think needs no explanation.

Now, we will skip the taxes for the moment. The prorata retirement of capital stock is based on a retirement of one  $10\frac{1}{2}$  fraction per year of \$3,776,873. The number of shares I have just stated is not the amount actually shown on the books to be outstanding at December 31, 1937. I think you are all acquainted with the item of 57,280 shares of treasury stock that are in dispute and which I think the Company contemplates will ultimately be issued and for [fol. 713] which provision must be ultimately made for retirement. The dividends at 8 per cent on balance of capital stock at the beginning of each year is, I think, self-explanatory, and the reason for its decreasing steadily.

Now, as to taxes, the taxes were variable quantities and caused a great deal of trouble, naturally, in the computation of the amount of cash to be required, because every time we figured a new amount for cash required on the other fixed factors the amounts of each of the taxes is changed, and the amounts of cash are shown there opposite the caption stated in round amounts and are frankly determined by methods of trial and error so that they would fit into the amount of income which would result in certain factors under the present Federal and State Tax Acts and the 2 per cent gross revenue provision of the counties. Mr. Thelen asked me a while back about the \$30,000 figure for Federal taxes shown in Exhibit 22, I believe the number is, and I can only account for the difference between that figure and what we show here, reaching a maximum of some \$230,000 in 1944, by the fact that the cash must be provided for the annual retirement of capital stock on this theory, and distributed to the stockholders. That cash becomes income to the Company and is subject to all the Federal taxes, the worst of which is the surtax on undistributed profits, and such distribution is not recognized under the Federal tax law at present in force as a dividend credit, so the major portion of this distribution would fall in the 22 and 27 per cent surtax brackets.

Q. May I ask at this point before you proceed, I assume [fol. 714] that you, in connection with your work as a part-

ner with Haskins & Sells, have a great deal of Federal income tax work to do, have you not?

A. Yes.

Q. In fact, almost every day you have to delve into problems of Federal income tax, do you not?

A. Well, that is rather concentrated, Mr. Thelen, at the due dates of the various taxes, Federal, State and so on, and we have been very busy in the last few years advising with clients as to how much dividends they shall pay to retain a working capital position and still avoid as much surtax on undistributed profits as possible.

Q. Then your firm, and you personally, as I understand it, do have a great deal of experience in connection with the computation of Federal taxes on income?

A. Oh, yes.

Q. Will you kindly proceed with your statement?

A. After what I have said thus far I think it is not necessary to direct any particular attention to what is contained in Note 1 on this statement. In Note 2 I am stating certain items have not been given effect in the statement. The balance sheet of the Company submitted to me recently, as of December 31, 1937, discloses a somewhat different picture from what it did at October 31, 1937, not only as to the books but in the Federal tax accrual which was omitted from the October 31st statement; and the net current assets of the Company at December 31, 1937, are only approximately \$20,000 after giving effect to a Federal tax accrual of approximately \$108,000 for 1937. That will be a shock to Mr. Morish. And current assets as disclosed by that statement are approximately \$400,000. And current liabilities, which include \$266,000 for gross revenue tax, now settled, I believe, through a decision handed down in connection with that litigation, amount to approximately \$380,000, leaving net current position of about \$22,000, without considering the Company's reserve for employees' retirement fund, but I don't think that should be considered in this particular case. I would have no objection to applying that immediately because the Company needs some working capital and that is a pretty small margin right now.

The next item I have noted as being not considered are any amounts which may ultimately be realized from disposal of the Company's investments in its two subsidiaries, the Bodeo-Vallejo Ferry Company and the Martinez-Benicia

Ferry & Transportation Company and in American Toll Bridge Company of California. The Company could not dispose of these companies at this time without inviting competition. That is why it has those companies. So I don't feel any consideration should be given to a liquidating value of these companies. The figures shown in Exhibit 22 for the Rodeo-Vallejo Ferry Company, approximately \$80,000, I believe, as of October 31, 1937, did not take into consideration the loss in connection with the piece of property sold prior to that date, such loss being about \$15,000. Furthermore, the Rodeo-Vallejo Ferry Company has no current assets and its properties, a small amount of the remaining property, is of rather doubtful value. And the Martinez-Benicia Ferry & Transportation Company, I think its current assets are not in excess of \$25,000 at December 31, 1937, and how long it can keep those is problematical. Certainly the Company [fol. 716] could not be liquidated or could not be sold at this time with any safety to the Bridge Company itself. As to what amount the Company may be worth at the finish, whether \$60,000 or \$80,000, seems to me a very small amount to be offset against the volume of figures shown as against cash requirements.

The next item that has not been considered is dividends which may be received. The Company received in 1936, I believe, an amount of about \$1100 from one company and about \$7000 odd from another, and in 1937 it received something less than \$6000 from one of the companies and approximately \$11,000 from another. Inasmuch as the dividends to be received are not within the control of the recipient company, I don't think they should be considered for the purpose of this sort. However, the maximum amount of dividends which the Company might receive from American Toll Bridge Company of California, based on its present stock ownership of that Company, would be not more than somewhere between \$25,000 and \$30,000 a year after the paying company had paid its own taxes on those dividends, and those dividends are partly taxable, and if it distributed all it had left. And it seems to me that those assumptions are a bit too nebulous to embody in this statement.

Finally, as to prepaid expense items of approximately \$102,000, consisting principally of prepaid taxes and prepaid insurance, they certainly should not be deducted from the amount of capital to be liquidated at the beginning. If



it is thought proper to deduct them in total at the end, after [fol. 717] they have expired, that might be done, or they might be prorated over the  $10\frac{1}{2}$  years and used to reduce the general operating expenses, but the effect on the whole picture would be practically negligible.

I think that is all I have to say.

Q. Would you like to return to the item of taxes and discuss the various items of taxes?

A. Well, I could point out that the gross operating revenue is precisely the tax of *tax of* 2 per cent on the gross operating revenue is precisely 2 per cent of the figures stated down opposite "Stated in round amounts". In other words, the cash requirements as I figure them here are entirely from bridge tolls. I might say any miscellaneous revenue that the Company has would not amount to more than about \$1000 a year. The figure used in Exhibit 22 of \$6000 consists principally of an amortization of income collected in advance, for which we will never get any more money. It is an item of \$60,000 remaining open for easements for which we have collected in advance and are amortizing over the life of the easements. The California State franchise tax is paid in a given year based on the income of the preceding year; hence you will find the 1939 California franchise tax less than the 1938, although the income for 1939 is greater than that for 1938. The Federal capital stock tax and the Federal taxes on income, which consist of excess profits tax, normal income tax and the portion of the income tax described as surtax on undistributed profits, I think have been discussed sufficiently.

[fol. 718] Q. Well, I would like to ask you just a few more questions, Mr. Haines, although you have in general explained everything that you have done. Looking at the year 1938, do you find an item here stated in round amounts, \$1,363,000, at the foot of the column?

A. Yes.

Q. That amount is somewhat less than the amounts for the immediately ensuing years. I believe you have already explained that the reason for it is because of an abnormal situation resulting from the fact that, as of December 31, 1937, there was a certain amount of cash already in hand.

A. There was \$188,000 in hand against principal retirement and \$93,000 in hand against interest requirement.

Q. That is the principal reason that accounts for that situation?



A. Well, if we added \$280,000 to the \$1,363,000 we would have \$1,640,000.

Q. Yes. After you have shown "Stated in round amounts" the amount of cash which I understand you consider to be necessary in each of these years under your assumptions, you show another series of figures across the page under the head of "Net dividends at 8 per cent for period from June 1, 1927, to December 31, 1935, based on 3,776,873 shares and spread over  $10\frac{1}{2}$  years". Will you kindly explain that item?

A. The Company paid no dividends subsequent to the opening of its bridges until the year 1936. In 1936 it paid 8 per cent, or 8 cents a share, and in 1937 it paid 13 cents, or 13 per cent per share. Figuring a return on the capital stock from the date the bridges were opened and setting June 1, 1927, as the beginning date and figuring 8 per cent [fol. 719] on the 3,776,873 shares outstanding at the close of this past year, for the period from June 1, 1927, to December 31, 1935, and then reducing that amount by the dividends actually paid in 1936 and 1937, we arrive at a figure of \$2,404,600. The method of distributing that is absolutely arbitrary, because if we were to relate that to the decreasing balance it would result in a ridiculous amount of retirements in the early years, an amount which is beyond the realm of possibility of recovering without increases in rates, which I think is out of line to expect. So that one  $10\frac{1}{2}$  part of 2,404,000 results in ten annual charges of \$229,000, and of \$114,600 in the last 6 months. That is not precisely accurate. I moved all the differences over into the last 6 months, of \$10 a year, in order to keep them in round amounts.

Q. In your opinion, does a logical application of the wasting asset theory require that consideration be given to that matter?

A. If we are to consider this as a wasting asset, as a quasi-utility, that I think is what the stockholders should look forward to getting.

Q. From your experience with investors, which I understand has been quite broad, do you believe that people would invest their money in a wasting asset if they understood that for the first half of the time they would get no dividends at all and that in the second half the dividends would be limited to the bare cost of money?

A. Not a prudent investor..

Q. Now, Mr. Haines, I observe in your retirement of capital stock you arrange for the retirement of 3,776,873 [fol. 720] shares.

A. Yes.

Q. In your computation you have not undertaken, have you, to reduce the amount of stock to be retired by any assumed excess of resources over liabilities?

A. No.

Q. And as I understood your testimony, you found from a careful examination of the Company's balance sheet as of December 31, 1937, that there were net current assets there of only about \$20,000?

A. That is right.

Q. And in your computation you have disregarded that \$20,000?

A. That is right.

Q. In other words, you have not applied the \$20,000 to reduce the amount of capital stock outstanding?

A. Have not applied it in any way in this statement. As I say, the total here of the items we can measure definitely is 102, plus 20, or \$122,000; and I would hate to set any value on these other assets which have been used previously, to reduce the amount of capital to be returned at this time.

Mr. Thelen: I think that is all, Mr. Haines.

Commissioner Riley: The Commission will be in order.

Mr. Thelen: If the Commission pleases, at one of the early hearings I ventured to make the assertion that I believed it was the policy of this Commission, in the event of new enterprises which had development costs in the early years, to make up such losses later if it were possible to do so. The Commissioner evidenced an interest in that matter and asked me if I had authorities, and I said I would be glad to supply them.

[fol. 721] I find quite a number of decisions to that effect of the Railroad Commission. I have not undertaken to cite them all, simply to take typical ones, a few from the early history of the Commission, one from what you might call the middle period and then a very recent one. The early ones are by President Eshleman, and during the middle period a decision of Commissioner Brundige in the Southern Sierras Power Company and Holton Power

Company case, 18 C. R. C., 818, and one of the most recent ones by Commissioner Seavey in the Pacific Gas and Electric Company natural gas case, 39 C. R. C., 49. I would like, if I may, just to read one paragraph and then ask permission to file a memorandum of authorities. The paragraph I would like to read is from the decision of President Eshleman in Monohan, as Mayor of San Jose, vs. San Jose Water Company, in 4 C. R. C., 1101, at page 1115, where President Eshleman said,

"I am firmly of the opinion that necessary development cost, which is interest on the idle money in a plant during a reasonable time in which it may reasonably be expected not to be fully productive, is as much a part of the cost of the plant as an expenditure for pipe or right of way. What I mean definitely is this: There is presented a field for the operation of a public utility. It is known that this utility after it is constructed and ready to begin operation can not from the beginning earn a reasonable amount on the investment. A fair degree of wise foresight prepares the business man for these losses in the early days of his business, and if such losses are not to be recouped from earnings after the plant has reached maturity, then the investor can not be expected to make such investments. But this principle does not justify the investment of money in an enterprise that does not give promise of reaching a paying basis within a reasonable time. If the business is well conceived, there will be a uniform approach from the very beginning of the operation of the completed enterprise to a fully paying basis. During the development period, therefore, there will be yearly a decreasing amount of the capital investment which is not returning a reasonable amount, and the interest upon this decreasing amount of idle capital is a part of the cost of the property which must be foreseen and prepared for by the investor and must be allowed by the rate-fixing body."

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[fol. 722] LESTER S. READY, recalled.

Direct examination resumed:

Mr. Thelen: Have you prepared an exhibit, Mr. Ready, on the subject of the estimated value of the Rodeo-Vallejo Ferry Company franchise?

A. I have.

Q. Have you that exhibit before you?

A. Yes.

Mr. Thelen: If the Commission please, we ask that that exhibit be introduced and marked Exhibit No. 127.

Commissioner Riley: It will be received and marked 127, of the respondent.

(Here follows Exhibit No. 127—pages 1 and 2.)

[fol. 723] COMPANY EXHIBIT No. 127

Witness Lester S. Ready

Estimated Value Rodeo Vallejo Ferry Company Franchise  
San Francisco, January —, 1938.

[fol. 724] Estimated Value to American Toll Bridge Company of Rodeo Vallejo Ferry Company Franchise

The Rodeo Vallejo Ferry Company organized the American Toll Bridge Company and aided the latter in financing the Carquinez Bridge. On the completion of the Carquinez Bridge the Rodeo Vallejo Ferry Company abandoned service, thus making available to the Bridge its entire business and eliminated costly competition such as experienced in the cases of the Golden Gate Bridge and the San Francisco Bay Bridge.

One basis of estimating the value of the franchise, or rather right to do and actual business is a comparison of costs on a relative revenue or capital basis of the several bridges.

[fol. 725] (a) Ferry Operating Revenue:

(1) Rodeo Vallejo Ferry Co., 1926	\$497,573
(2) Southern Pacific Golden Gate Co., 1936	5,263,928

(b) Bridge Capital:

(1) Carquinez Bridge 12/31/27	\$7,258,469
(2) Antioch Bridge 12/31/26	1,585,717
(3) San Francisco Oakland Bay Bridge 6/30/37	55,055,614
Golden Gate Bridge 11/1/37	34,127,774

\$89,183,388



**Resultant amount  
for Carquinez  
Bridge**

**Estimated Value of Franchise:**

- |  |                  |
|--|------------------|
| <p>(a) Purchase of Lauritzen Ferry Franchise by American Toll Bridge Company in connection with Antioch Bridge for \$50,000 equalled 3.15% of Bridge cost. Applied to Carquinez Bridge</p> | <p>\$224,000</p> |
| <p>(b) Suggested payment of \$3,750,000 for S. P. G. G. Franchise if applied to both bridges equals 71.2% of 1936 revenue of Ferry</p>   | <p>\$354,000</p> |
| <p>and equals 4.2% of cost of Bridges</p>  | <p>\$305,000</p> |

[fol. 726] Mr. Thelen: Will you kindly explain the exhibit, please?

A. In the figures of cost of the Carquinez bridge, as shown by the Company records and also by the estimate of reasonable historical cost as set forth in Exhibit 117, there has been no inclusion for the franchise or right to do business, or doing of business, of the Rodeo-Vallejo Ferry Company at the time the bridge was completed; that is, it was the construction of the bridge with the understanding that the Ferry Company would quit, but there was no amount set forth in construction costs or in payment for rights of way dealing with the value of the right to do business of the parent company. In order to get an idea of what might be classified as the minimum allowance for such a right, were the bridge constructed by other than the Rodeo-Vallejo Ferry Company, I made an analysis of the comparative cost for purchase of an existing ferry company in the case of the Antioch Bridge and also, applied on both a capital and revenue basis, a proposed or suggested payment for the franchise of the Southern Pacific Golden Gate Ferry for its elimination from competition with the Bay Bridges. I say this would be a minimum figure because it represents, particularly in the latter case, the payment, or a suggested payment, for clearance of right of way after practically a year's competition, competitive fight, in which there has been a fairly heavy loss to the bridge in its otherwise income. In this exhibit, from which I will read the text, I have attempted to indicate what, at least on one



measurement, one method of measurement, the franchise was worth. I might say in that connection that the only compensation, apparently, that was received by the Rodeo-[fol. 727] Vallejo Ferry Company for its quitting of business was certain stock of the American Toll Bridge Company operating, or the American Toll Bridge Company of California, as payment, you might say, for the quitting of its operations, rather than the payment which might occur had a competitive fight occurred for, say, a year, as it has here in the Bay for more than a year, and then a settlement comparable to this.

On the second page under item A is set forth the operating revenue of the Rodeo-Vallejo Ferry Company for 1926, the year preceding the completion of the Carquinez Bridge, and for the year 1936 for the Southern Pacific Golden Gate Ferries for a whole year preceding the completion of the Golden Gate Bridge and 10 months of the year in which—or 10 months prior to the completion of the Bay Bridge and 2 months in the competitive period. Then under B is set forth the capital in the Carquinez Bridge as of December 31, 1927, the capital of the Antioch Bridge as of December 31, 1926, the investment in the San Francisco-Oakland Bay Bridge, exclusive of such moneys as were spent for the interurban operations, as of June 30, 1937, and the Golden Gate Bridge as of November 1, 1937. The figure totaling \$89,183,388 should be noted as the total of item 3 and not the total of the four figures above. The American Toll Bridge Company paid for the Lauritzen ferry franchise \$50,000, which was 3.15 per cent of the bridge cost. If that were applied to the Carquinez Bridge it would amount to \$224,000. The present proposal for discussion regarding clearing of the ferries from the Bay [fol. 728] in competition with the Bay Bridge is the payment of \$3,750,000. Up to the present time it is not clear whether that is to eliminate the competition of the Golden Gate Bridge or not, but the suggestion is that that would be the case, and I have assumed that in this computation, that the ferry boat service, auto ferry service, would be eliminated from competition with both bridges and that, therefore, the cost on the basis of the sum total of the two bridges should be taken, rather than just on the Bay Bridge. On this basis the price would be 71.2 per cent of the 1936 revenue which, applied to the Rodeo-Vallejo Ferry Company would amount to \$354,000 and it amounts to 4.2 per

cent of the bridge costs, which would amount, as applied to the Carquinez Bridge, to \$305,000.

Q. Mr. Ready, I will ask you just one question as to this exhibit, as to what, in your judgment, based on these computations, would have been a reasonable amount to be paid for the clearance of the competitive situation that would have resulted if the Rodeo Vallejo Ferry Company had continued to operate?

A. Between \$250,000 and \$300,000.

Q. Now, have you or have you not included that figure in your subsequent computations of capital or rate base?

A. I have not.

Mr. Thelen: If the Commission please, we ask that this exhibit entitled "Earning statement, Martinez-Benicia Ferry & Transportation Company, 1935 to 1937", be introduced as Exhibit 128.

Commissioner Riley: So received and noted, Exhibit 128.

(Here follows Exhibit No. 128—page 1.)

[fol. 729]

COMPANY EXHIBIT No. 128

Witness: Lester S. Ready

American Toll Bridge Company

Earning Statement

Martinez-Benicia Ferry and Transportation Company

1935-1937

	1935	1936	12 Months Ending 11/30/37 Primary Figures
(1) Property & Equipment 12/31	\$111,207.26	\$112,527.90	\$112,600.00
(2) Depreciation Reserve 12/31	82,778.80	87,308.08	
(3) Income Account:			
Transportation Rev.	93,793.19	103,917.44	
Rent and Commissions	935.26	857.20	
Interest & Dividends	1,399.85	427.43	
Profit from sale of land, etc.	3,155.00		
Total	\$99,283.30	\$105,202.07	\$102,297.00
(4) Operating Expenses (Incl. Depreciation)	\$82,281.90	94,553.18	96,702.00
(5) Taxes	4,159.12	3,012.18	incl. above
(6) Total Deductions	\$86,441.02	\$97,565.36	\$96,702.00
(7) Net	\$12,842.28	\$7,636.71	\$5,595.00
(8) Net exclusive of Profit— Land Sales, Etc.	\$9,687.28	\$7,636.71	\$5,595.00

[fol. 730] Mr. Thelen: Will you explain that exhibit please?

A. The Martinez-Benicia Ferry & Transportation Company is owned by the American Toll Bridge Company and is operated across the Carquinez Straits between the Carquinez Bridge and the Antioch Bridge and renders a complementary service to the Carquinez Bridge, largely taking travel from Eastern Alameda and Contra Costa Counties and some from the Bay area. It is a part of the general service across the Carquinez Straits and river. It seemed advisable to have in the record a statement of the earnings of this Company for the last 3 years. This statement shows the amount of property as shown by the Company's books, amounting to approximately \$112,000; the depreciation reserve as of the end of each year, varying between \$80,000 and \$90,000; the income, which in 1935 was a total of \$99,283, that is, the gross income; 1936, \$105,202; and the preliminary figures for 1937, \$102,297. Item 8 of the table shows the net earnings from the operation, exclusive of profits from sale of lands, and so forth, as follows: 1935, \$9,687.28; 1926, \$7,636.71; 1937, \$5,595 as a preliminary figure.

Q. Assuming that the Carquinez Bridge were required to reduce its tolls, is there any doubt in your mind that the Martinez-Benicia Ferry Company would be compelled, by reason of that reduction, to reduce its rate of fare?

A. Well, if any material reduction is made on the Carquinez Bridge my answer is yes. The Martinez-Benicia rates are lower than the Carquinez Bridge rates at this time. They carry a limited amount of business, which will [fol. 731] be shown later to come from a portion of the territory south and they are supplying about 7 per cent of the total traffic across the Straits, and a reduction of rates such as suggested by Mr. Hunter would call for practically the same rates on this ferry, and I personally can not see how they would pay operating expenses under those conditions, because they would have to run practically the same number of boats, or more, and its gross revenue would be reduced materially.

Q. In other words, in such a situation would it be your judgment that the net here shown would be entirely wiped out?

A. Yes, sir.

Commissioner Riley: I wanted to ask a few questions about this, Mr. Ready. How has the business of the Mar-

tinez-Benicia Ferry Company held up over the years? Is this comparable to its former operation?

A. I haven't the past record with me right now and I can't answer that specifically. I can say this, that as indicated here, the increase in the highway conditions, or the improvement in highway conditions, rather, in 1936 and 1937, with the completion of the East Shore Highway and the American Canyon cut-off, have tended to reduce this somewhat, while the Carquinez Bridge traffic has increased quite materially. I can get you those figures for the past but I don't have them in mind now.

Q. Are the operating rates the same in 1936 as in 1935, that is, the tolls?

A. Yes; 45 cents plus 10 cents for passenger, as compared with 60 cents plus 10 cents for passenger.

[fol. 732] Mr. Thelen: Now, Mr. Ready, have you prepared an exhibit entitled "Cost of money and fair rate of return"?

A. Yes, sir.

Mr. Thelen: If the Commission please, we ask that that exhibit be introduced as Exhibit 129.

Commissioner Riley: So received and noted as Exhibit 129.

(Here follows Exhibit No. 129—pages 1 to 5, inclusive, and Tables No. 1, 2 and 3.)

[fol. 733] COMPANY EXHIBIT No. 129

Witness Lester S. Ready

Cost of Money and Fair Rate of Return

American Toll Bridge Company

San Francisco, January —, 1938.

[fol. 734] I. Original Bond Financing

The American Toll Bridge Company financed the major cost of its two bridges through two bond issues in 1925. The cost of this money is set forth in Mr. F. Coleman's Ex. No. 1 pages 16 and 17.

The cost of money obtained through the two issues may be summarized as follows:

## A. Bond Issues and Proceeds:

1. Total face value of issues.....	\$6,500,000
2. Bond discount and expense (Co. Books).....	673,853
Payments R. L. Dunn (cash).....	12,639
Sub-total.....	\$686,492
3. Stock issued in connection with bonds:	
65,000 shares to R. L. Dunn.....	104,000
500,000 shares to Underwriters.....	800,000
Total.....	\$1,590,492
4. Net Cash Proceeds.....	5,813,508

	Straight Line Amortization Total	%	Sinking Fund Amortization Total	%
B. Annual Cost of Money:				
1. Interest.....	\$475,000		\$475,000	
2. Amortization Bond Discount and Expense.....	34,325		18,659	
Sub-total.....	\$509,325	8.73	\$493,659	8.48
3. Amortization of stock issued to R. L. Dunn.....	5,200		2,827	
Underwriters.....	40,000		21,744	
Total.....	\$554,525	9.71	\$518,230	9.07

## [fol. 735]. II. Refinancing, 1935

The Company in 1935 refinanced thru 5.5% bonds of a total par value of \$4,300,000. Bonds were in four series ranging from one to ten years.

Series A, B and C were to be retired in one to three years. Series D bonds were due at end of ten years, but trust indenture requirements called for actual retirements annually as follows:

Series	Amount	Date to be Retired	Period Years	Premium	Period Times Total Amount Dollar Years
A.....	\$350,000	8/1/36	1	.....	\$350,000
B.....	350,000	8/1/37	2	.....	700,000
C.....	400,000	8/1/38	3	.....	1,200,000
D 1.....	400,000	8/1/39	4	\$10,000	1,640,000
2.....	400,000	8/1/40	5	10,000	2,050,000
3.....	425,000	8/1/41	6	10,625	2,613,750
4.....	455,000	8/1/42	7	11,375	3,264,625
5.....	475,000	8/1/43	8	11,875	3,895,000
6.....	505,000	8/1/44	9	.....	4,545,000
7.....	540,000	8/1/45	10	.....	5,400,000
	4,300,000			53,875	25,658,375
					25,658,375
					Weighted Average $\frac{25,658,375}{4,353,875} = 5.893$ yrs.
					4,353,875

## (A) Cost of New Money Received

(1) Bonds issued & proceeds.....	
(a) Face value of issue.....	\$4,300,000.00
(b) Net Cash proceeds.....	4,105,972.30
(c) Bond Discount & Expense.....	194,027.70
(d) Premiums required.....	53,875.00
(e) .....	247,902.70



[fol. 736]

	Straight Line Amortization	Sinking Fund Amortization
(2) Annual Cost:		
Interest.....	\$236,507	\$236,500
Discount, Expenses & Premiums.....	42,017	36,260
	<u>\$278,517</u>	<u>\$272,760</u>
(3) Cost in % of Net Proceeds.....	6.78%	6.65%
(B) Average Cost including Amortization of unamortized bond discount & expense & premium of original issue.		
Unamortized Bond discount & expense original issue as of 8/1/35		\$440,521.88
Premium on bonds.....		131,300.00
Total.....		<u>\$571,821.88</u>
	Straight Line Amortization	Sinking Fund Amortization
(1) Annual Cost new Bonds.....	\$278,517	\$272,760
(2) Amortization \$571,821.88.....	96,915	83,640
	<u>\$375,432</u>	<u>\$356,400</u>
(3) Total.....	9.45%	8.95%
(4) Cost percent of Net Proceeds.....		
The net proceeds thru the refinancing were		
\$4,105,972.50 - \$131,300 - \$3,974,672.30		

### III. Comparative Cost of Money

(A) Many of the major utilities regulated by the Railroad Commission serve extensive areas and diversified business and have been well established going concerns. Some of these are Pacific Gas and Electric Company, Great Western Power Company, Los Angeles Gas and Electric Corporation, the Pacific Telephone and Telegraph Company, San Diego Consolidated Gas and Electric Company and San Joaquin Light and Power Corporation.

A comparison of the cost of money to such utilities in 1925 and also in 1935 with that to American Toll Bridge Company will indicate to a considerable extent the relative hazard and also reasonable or fair return allowable.

Table No. 1 attached sets forth costs of bond money to such utilities during 1922 to 1928 based on bonds issued.

The cost of bond money to such utilities in 1925 would [fol. 737] appear to be between 5.65% and 6.35% compared with cost of first mortgage bonds of the American Toll Bridge Co. of between 8.1% (not considering Bonus stock) and 8.37% (Bonus stock included).

$$\text{Approximate Ratio} \quad \frac{8.23}{6.00} = 1.37$$

(B) Many of the major utilities refinanced in 1934, 1935 and 1936 at materially reduced interest rates. Table No. 2

sets forth the cost of proceeds as a result of the refinancing. This cost for major utilities varied between 3.74% and 4.12% and for smaller utilities from 4.56% to 5.40%. Refinancing of American Toll Bridge Company in 1935 was at a cost of 6.65%.

Approximate Ratio large Utilities  $6.65 = 1.66$

		4.00	
"	" smaller "	6.65 = 1.33	
		5.00	

Chart No. 1 shows graphically the relative cost of money of the utilities and American Toll Bridge Company.

(C) Table No. 3 compares the average cost of money for several major utilities with the rate of return found reasonable and allowed by the Railroad Commission. These money costs include average of bond, preferred stock issues and depreciation reserve moneys as incurred based on issues outstanding at the time of study.

In the period of Regulation prior to the World War the Railroad Commission in several main cases allowed 8% return as reasonable where borrowed (Bond) money cost approximately 6%. Subsequent to 1918 with increased federal income taxes and greater development and stabilization of utilities a lesser margin has been allowed. Decision No. 9404, 20/CRC/402 fixing rates for Southern California Gas Company in its eastern area found 9% reasonable where money cost 7% owing to hazard of natural gas service and other factors.

Summarizing Table No. 3 the following shows ratio of fair return to historical cost of money.

	Money Cost	Fair Return	Ratio
1921 Southern Calif. Gas Co. ....	7%	9%	1.28
929 The Pacific Tel. & Telegraph Co. ....	6.09%	7.0%	1.15
930 Los Angeles Gas & Electric Corp. ....	6.14	7.0	1.14
932 San Joaquin Light & Power Corp. ....	6.36	7.0	1.10
932 Midlands Counties Pub. Serv. Corp. ....	5.81	7.0	1.20
933 Pacific Gas & Electric Co. ....	5.82	6.7	1.15
935 San Diego Cons. Gas & Elec. Co. ....	6.43	6.7	1.04

In the case of San Diego Co. failure to refinance during the low cost of money period of 1927 continued a high cost of money which was reduced shortly after the Commission decision of 1935.

[fol. 738] Applying the ratio of 1.15 which has been applied to the more stable utilities to the American Toll Bridge Company cost of first and second mortgage bonds gives the following:

Money Cost based on non inclusion of Bonus stock,  
 $8.48\% \times 1.15 = 9.75\%$

Based on inclusion of Bonus stock,  $9.07 \times 1.15 = 10.43\%$ .

The above would suggest that 10% return would be a reasonable return for the American Toll Bridge Company.

The American Toll Bridge Company's properties are being amortized on the 6% Sinking Fund basis so that the average cost of money may be assumed to be made up of Bond and Stock money and Depreciation reserve monies varying as the reserve increases. The following indicates the fair return based on 1.15 times the average cost of money for the entire period.

Year	% Capital	% Accrued Reserve	Average Cost of Money		Fair Return 1.15 x Cost %
			9% Bonds & Stock	6% Depn. Reserve	
1926.....	98.92	1.08	8.9676		10.313 )
1927.....	98.55	1.45	8.9565		10.300 ) Average
1928.....	96.73	3.27	8.9019		10.237 )
1929.....	94.15	5.85	8.8245		10.148 )
1930.....	91.48	8.52	8.7444		10.056 ) 9.966%
1931.....	88.63	11.37	8.6589		9.958 )
1932.....	85.44	14.56	8.5632		9.848 )
1933.....	82.03	17.97	8.4609		9.730 )
1934.....	78.41	21.59	8.3523		9.605 )
1935.....	74.59	25.41	8.2377		9.473 ) 9.473
1936.....	70.54	29.46	8.1162		9.334 )
1937.....	66.25	33.75	7.9875		9.186 )
1938.....	61.70	38.30	7.8510		9.029 )
1939.....	56.87	43.13	7.7061		8.862 )
1940.....	51.76	48.24	7.5528		8.686 )
1941.....	46.34	53.66	7.3902		8.499 ) 8.332%
1942.....	40.59	59.41	7.2177		8.300 )
1943.....	34.50	65.50	7.0350		8.090 )
1944.....	28.04	71.96	6.8412		7.867 )
1945.....	21.20	78.80	6.6360		7.631 )
1946.....	13.94	86.06	6.4182		7.381 )
1947.....	6.25	93.75	6.1875		7.116 )
1948.....	1.72	98.28	6.0516		6.959 )

California Railroad Commission

Case No.	Exh. No.	Decision No.	Date	Company	Bonds	Yr	Aver. Price	Par Value Bonds As Of	Outstanding Amount	Exp. On S. F. Basis	Effective Interest Rate
2747	6	23102	11/24/30	L. A. G. & E. Corp.	General & Refunding	1922	\$95.76	6/30/29	\$1,937,500	6.40%	
					"	1922	91.98	"	4,999,500	6.16	
					"	1923	94.01	"	3,809,000	6.04	
					"	1923	94.76	"	4,090,000	6.51	
					"	1924	94.53	"	7,545,000	6.55	
					"	24-26	93.78	"	8,952,000	6.00	
					"	1927	94.70	"	10,000,000	5.34	
3008	3	24809	5/24/32	S. J. L. & P. Corp.	First & General	1922	96.36	12/31/30	4,633,000	6.33	
					Unifying & Refunding	1923	94.75	"	2,500,000	6.43	
					"	1924	95.00	"	2,500,000	6.43	
					"	1927	95.19	"	25,000,000	5.35	
3152-3	25	27730	2/4/35	S. D. C. G. & E. Co.	First & Refunding	1922	.....	"	1,500,000	6.49	
					"	1923	.....	"	1,438,000	6.59	
					"	1926	.....	"	2,500,000	5.47	
					"	1922	91.00	12/31/27	25,000,000	5.67	
2462	165	21766	11/27/23	The P. T. & T. Co.	Refunding	1922	95.24	12/31/32	2,000,000	5.849	
3333	15	.....	.....	So. Calif. Gas Co.	First & Refunding	1924	93.15	"	2,000,000	6.031	
					"	1926	94.65	"	2,000,000	5.921	
					First Mtg. & Ref.	1927	94.96	"	3,646,000	5.345	
					"	1931	92.64	"	12,500,000	4.977	
2225	8	.....	.....	P. G. & E. Co.	First & Ref. Mtg.	1921	94.25	6/30/29	10,000,000	6.59	
					"	1922	95.50	"	10,000,000	6.45	
					"	1923	93.50	"	20,000,000	6.01	
					"	1924	93.50	"	25,000,000	6.32	
					"	1925	91.25	"	10,000,000	5.65	
					"	1926	94.75	"	10,000,000	5.39	
					"	1927	93	"	15,000,000	4.99	
					"	1928	96	"	20,000,000	4.78	
2235	5	.....	.....	G. W. P. Co. of Calif.	First & Ref. Ser. "C"	1922	95.33	"	3,000,000	6.40	
					"	1923	96.00	"	1,000,000	6.35	
					"	1924	95.50	"	2,000,000	6.39	

## Basis of Issue of Certain Bonds Authorized by C. R. C. in 1935, '36 &amp; '37

Table No. 2

Company	Bond Description	Amount Issued	Price to Company	Offering Price	% to Underwriters	Expenses of Company	% of Exps. To Total Issue	Yield to Purchasers	"Sinking Fund" Cost to Co.
<b>Gas &amp; Electric Cos.</b>									
1936 The Cal. Ore. Power Co.	1st 4 3/4 due 1966	\$13,500,000	95	97.5	.025	\$141,753	.010	4.15%	4.30%
" Calif. Public Service Co.	1st 5s " 1961	400,000	100	103.5	.035	1,161	....	5	4
1935 Coast Co. G. & E. Co.	1st 4s " 1965	3,000,000	100	103.5	.035	176,308	.004	3.90	4.05
" L. A. G. & E. Corp.	1st & Gen. 4s, due	70 40,000,000	99.5	102	.025	293,630	.006	4	4.22
" " " "	1st & Ref. " 4s	64 45,000,000	97	100	.03	150,214	.005	3.77	3.91
" " " "	" " " "	30,000,000	102	104	.02	96,756	.005	3.88	4.03
" " " "	" " " "	20,000,000	100	102	.02	417,742	.005	3.60	3.74
1936 " " " "	" " " "H" 3 1/4	61 90,000,000	100.5	102.5	.02	181,459	.006	3.85	3.74
" " " "	" " " "I" 3 1/4s	30,000,000	100.75	102.75	.02	199,083	.006	3.85	3.48
" " " "	1st 4s, due 1965	66 35,000,000	100.75	102.75	.02	137,750	.009	3.95	4.12
1935 S. D. C. G. & E. Co.	Ref. 3 1/4s, due 1960	15,500,000	98	101	.03	326,369	.004	3.85	4.08
" " S. C. E. Co., Ltd.	Ref. B, 3 1/4, " 1960	73,000,000	96	98.5	.025	128,742	.004	3.85	4.00
" " " "	Ref. B, 3 1/4, " 1960	35,000,000	96.5	98.5	.02	180,958	.006	3.87	4.03
" " " "	1st & Ref. 4s, due 1960	30,000,000	100	102	.02	79,058	.003	1.00-3.75	1.2-4.04
" " " "	Deben. 2 1/2-3 1/4	27,500,000	98.25-101.59	99.6-101.8	.01	112,708	.007	3.90	4.10
" " So. Calif. Gas Co.	1st & Ref. 4s due 1965	15,000,000	99	101.5	.025				
<b>Telephone Companies:</b>									
1935 Assoc. Tel. Co. Ltd.	1st 4s B, due 1965	8,500,000	96	99	.03	59,850	.007	4.05	4.28
1936 The P. T. & T. Co.	Ref. 3 1/4s B, due 1966	30,000,000	99.5	101.5	.02	178,722	.006	3.16	3.30
" " " "	3 1/4s C, " 1965	25,000,000	103	105	.02	131,178	.005	2.99	3.15
" Santa Barbara Tel. Co.	1st 3 1/4s, due 1966	1,400,000	100.5	102.5	.02	13,117	.009	3.37	3.52
<b>Water Companies:</b>									
1936 Calif. Water Serv. Co.	1st 4s, B, due 1961	10,000,000	100.5	102.5	.02	78,329	.008	3.85	4.02
1935 Calif. Water & Tel. Co.	1st 5s, due 1965	5,000,000	97	101	.04	113,005	.023	4.05	5.35
1936 San Jose Water Wks.	1st 3 1/4, A, due 1961	2,051,000	100.33	103	.0267	36,019	.017	3.60	3.85
1935 So. Calif. Water Co.	1st 4 1/2s, due 1960	3,400,000	100	103.5	.035	27,692	.008	4.25	4.56
1937 San Jose Water Works	1st 3 1/4s, A, due 1961	1,022,000	98	100	.02	12,071	.012	3.75	3.95



Cost of Money—Weighted Average

Historical as of Dates Specified

Table No. 3

Rate Proceeding Before the C. R. C.

No. of Case or - C. R. C. Appl. No.	Decision Date	Rates Involved Company	Utility	Exhibit No.	By	Statement As Of	Weighted Aver Cost of Money Disct. & Exp. On S. F. Basis	Rate of Return Considered Reasonable By C. R. C.
1407	8/23/21	So. Cal. Gas Co.	Gas	20/C. R. C./408		12/31/27	7.0%	9.00
2462	11/27/29	The P. T. & T. Co.	Teleph.	165 Mr. Fankhauser (CRC)		6/30/29	6.09%	7.0%
2747	11/24/30	L. A. G. & E. Corp.	Gas & El.	6	"	12/31/30	6.14%	7.0%
3008	5/24/32	S. J. L. & P. Corp.	Electric	3	"	12/31/30	6.36%	7.0%
3026	5/24/32	M. C. P. S. Corp.	Electric	4	"	12/31/30	5.81%	7.0%
3424	11/12/33	P. G. & E. Co.	Gas	14	"	12/31/32	5.82%	6.7%
3152-3	2/4/35	S. D. C. G. & E. Co.	Gas, Steam	25 Mr. Coleman (CRC)		12/31/31	6.43%	6.7%
27730								

[fol. 742] Mr. Thelen: Will you please proceed in your own way, Mr. Ready, and explain what you have done in the exhibit?

A. I believe I will read a considerable portion of the text of this exhibit in order to bring out what it sets forth. The first heading is "Original bond financing" and I will read there. "The American Toll Bridge Company financed the major cost of its two bridges through two bond issues in 1925. The cost of this money is set forth in Mr. Coleman Exhibit No. 1, pages 16 and 17. The cost of money obtained through the two issues may be summarized as follows: And the table shows a total face value of bonds issued of \$6,500,000; bond discount and expense of \$673,853; payments to R. L. Dunn in cash of \$12,639, making a sub-total of \$686,492. In addition stock was issued in connection with the bonds, 65,000 shares to R. L. Dunn and 500,000 shares to the underwriters which, at the net price at that time totaled \$104,000 and \$800,000, respectively. Net cash proceeds would be \$5,813,508 on item 1, minus item 2.

Follows then sub-heading B of annual cost of money. It sets forth the interest both on a straight line and the 6 per cent sinking fund basis. Amortization of bond discount and expense is listed under item 2, showing the cost of money on a straight line basis of 8.73 per cent and on a sinking fund basis of 8.48 per cent.

Amortization of stock issued to Mr. Dunn and the underwriters, item 3, would increase the cost to 9.71 on the straight line basis and 9.07 on the sinking fund basis; that is, the money cost this Company on that basis 9 per cent [fol. 743] that representing first and second mortgage bonds, which normally would be fairly comparable to first mortgage bonds and preferred stock of another utility.

"Refinancing, 1935. The Company in 1935 refinanced through 5.5 per cent bonds of a total par value of \$4,300,000. The bonds were in four series ranging from 1 to 10 years. Series A, B and C were to be retired in 1 to 3 years. Series D bonds were due at end of 10 years, but trust indenture requirements called for actual retirements annually as follows"—

And then follows a table which shows the amount of face value of bonds to be retired each year, the date to be retired, the period of years that the bonds would be out, the

premiums required to be paid under the indenture—that is, they had to be called and a  $2\frac{1}{2}$  per cent premium paid during the period except for the last two portions of the series D bonds. In the last column is set forth the period times the total money, which would have to be paid at the calling of the bonds, that being used to determine the weighted average period in which the bonds were out. This shows an average period of 5.89 years as the average period of the loan. Under "A" following is determined the cost of money, item 1 showing the bonds issued and item B the net cash proceeds; item C, bond discount and expense, and "D" the premiums that would have to be paid. In effect, as I see it, the Company really had a discount and expense of \$247,902.70, and [fol. 744] that represents the difference between the money actually received and the amount of money that would have to be paid when the bonds were retired.

On page 3, item 2, is shown the computation of the annual cost of money which, on the straight line basis, is 6.78 per cent and on the sinking fund amortization basis, 6.65 per cent—that is, amortizing the bond discount and expense over the average life of the bonds. As this is a relatively short period that figure is practically the same as would be obtained were it figured out by each portion of the various series separately and I did not go through the more detailed computation of taking each series through.

Then under "B" is the average cost, including amortization of unamortized bond discount and expense and premium on original issue. As Mr. Coleman points out in his report, there was unamortized bond discount and expense as of August 1, 1935, on the preceding bond issues of \$440,521.88, and the premium on bonds outstanding of \$131,300 was paid, making a total of \$571,821.88.

Following that is shown the annual cost of new bonds, taken from the summary at the top of the table, to which has been added amortization of \$571,821.88 over the remaining period of the life of the bonds issued in 1935. This gives an annual cost of the moneys throughout the remaining period of 9.45 per cent on the straight line basis and 8.95 per cent on the sinking fund basis. In that case the premium on the original bonds has been deducted from the cash received on the refinancing bonds to give the net cash received by the transaction. It is interesting to note that the cost of the [fol. 745] original money was 9.07 and the cost of the money

continued through the life of the total bond issues would be 8.95.

The next portion of the exhibit I discuss the comparative cost of money of this Company with the utilities which the Commission has generally been called upon to give serious consideration to, particularly as to the cost of money and rate of return.

"Many of the major utilities regulated by the Railroad Commission serve extensive areas and diversified business and have been well established going concerns. Some of these are Pacific Gas and Electric Company, Great Western Power Company, Los Angeles Gas and Electric Corporation, the Pacific Telephone and Telegraph Company, San Diego Consolidated Gas and Electric Company and San Joaquin Light and Power Corporation.

"A comparison of the cost of money to such utilities in 1925 and also in 1935 with that to American Toll Bridge Company will indicate to a considerable extent the relative hazard and also reasonable or fair return allowable.

"Table No. 1 attached sets forth costs of bond money to such utilities during 1922 to 1928, based on bonds issued."

Table 1, there is set forth from the analysis of decisions of the Commission and exhibits introduced therein the cost of money for different bond issues of several of the utilities [fol. 746] referred to. The first column gives the case number, the second column the exhibit number, which I believe in all cases were exhibits filed by the Commission's staff; the next column the decision number, date of decision, the name of the company, type of bonds, interest rate, year issued and the cost of money on the sinking fund basis for bonds outstanding as of the date set forth in the next column—I mean not the cost of money but the average price. In the last column is the cost of money including discount and expense amortized on the sinking fund basis. There were a few more we had that were not in this table, that are shown in a chart later and I will explain more regarding them.

"The cost of bond money to such utilities in 1925 would appear to be between 5.65 per cent and 6.35 per cent compared with cost of first mortgage bonds of the American Toll Bridge Company of between 8.1 per cent (not con-



sidering bonus stock) and 8.37 per cent (bonus stock included)."

The 6.35 was on a bond issue not finally listed here, that is, we only listed what could be put on one page. I have compared these bonds with the first mortgage bonds because the bonds listed in Table 1 are in most cases first mortgage or general and refunding mortgage bonds and would not be comparable to the second mortgage bonds or to the average of the first and second mortgage bonds issued by the Company in 1925. This shows, if we take an average, the approximate ratio of 1.37; that is, that the bond money cost this Company 37 per cent more than the cost generally of [fol. 747] these more or less well established utilities.

"B. Many of the major utilities refinanced in 1934, 1935 and 1936 at materially reduced interest rates. Table 2 sets forth the cost of proceeds as a result of the refinancing. This cost for major utilities varied between 3.74 per cent and 4.12 per cent and for smaller utilities from 4.56 per cent to 5.40 per cent. Refinancing of American Toll Bridge Company in 1935 was at a cost of 6.65 per cent."

The approximate ratio of cost of money of refinancing as between the American Toll Bridge Company and these major utilities would then be 1.66 per cent, that is, the cost of money was 66 per cent higher than the cost of money to the large established utilities, and this was on a refinancing as distinguished from the financing of the Company which had not yet become a going concern. And the cost as compared with the smaller utilities listed in Table 2 would average approximately 1.33 per cent, the smaller utilities including the small water companies and the Associated Telephone Company.

"C. Table 3 compares the average cost of money for several major utilities with the rate of return found reasonable and allowed by the Railroad Commission. These money costs include average of bond, preferred stock issues and depreciation reserve moneys as incurred based on issues outstanding at the time of study."

Table No. 3 gives the case number, Commission decision number, the date of the decision, company involved, type of [fol. 748] utility, the exhibit number, the witness who pre-



sented the exhibit, the date of the statement as set forth in the case, the average cost of money for these various companies and the rate of return found reasonable by the Commission in the decision.

"In the period of regulation prior to the World War the Railroad Commission in several main cases allowed 8 per cent return as reasonable where borrowed (bond) money cost approximately 6 per cent. Subsequent to 1918, with increased Federal income taxes and greater development and stabilization of utilities, a lesser margin has been allowed. Decision No. 9404, 20 C. R. C., 402, fixing rates for Southern California Gas Company in its Eastern area, found 9 per cent reasonable where money cost 7 per cent, owing to hazard of natural gas service and other factors.

"Summarizing Table 3, the following shows ratio of fair return to historical cost of money."

In the case of Southern California Gas Company the ratio is 1.28; Pacific Telephone and Telegraph Company in 1929, ratio of 1.15.

Mr. Thelen: Will you just explain a little what those ratios mean?

A. They are the ratio between a fair return found reasonable in the Commission's decision and the average cost of bond money, preferred stock money and interest on depreciation reserve.

Q. In other words, as to the first item of Southern California Gas Company the Commission found that a rate of return was reasonable which was 1.28 per cent of the money [fol. 749] cost?

A. 1.28 times.

Q. 1.28 times the money cost, I mean.

A. That is correct. In the case of the Pacific Telephone and Telegraph Company, where the cost of money was 6.09 and the fair return 7 per cent was found, the ratio is 1.15; Los Angeles Gas and Electric Corporation, decided in 1930, the cost of 6.14 per cent, fair return of 7 per cent was allowed, or a ratio of 1.14; in the case of the San Joaquin Light and Power Corporation, determined in 1932, the cost of 6.36, fair return of 7 per cent; or a ratio of 1.10; Midland Counties Public Service Corporation decision at the same time, cost of money of 5.81, fair return of 7 and ratio of 1.20; Pacific Gas and Electric Company decision in 1933, 5.82

cost, 6.7 return, or 1.15; in 1935, San Diego Consolidated Gas and Electric Company cost of 6.43 per cent, return of 6.7 or 1.04 per cent. In the case of the San Diego Consolidated failure to refinance during the low cost of money period of 1927 continued a higher cost of money, which was reduced shortly after the Commission's decision in 1935. I am quite familiar with that particular case, as is Mr. Coleman, who made a study in this proceeding, that is, in the proceeding of 1935, and due to some local situation the Company was prevented from refinancing or could not refinance at the low cost, so that the cost of money in 1935 reflected the condition prior to the lower cost of money period when they could have refinanced. And in 1935, as is indicated by Table 2, the San Diego Company refinanced on the basis of 4.12 [fol. 750] for its bonds. It would not reduce the cost to 4.12 because depreciation was in there at 6 per cent and preferred stock was in, I believe, at excess of 6, but it would reduce the cost of money, which would still leave them with a 1.15 ratio, about.

"Applying the ratio of 1.15 which has been applied to the more stable utilities, to the American Toll Bridge Company cost of first and second mortgage bonds, gives the following: Money cost based on non-inclusion of bonus stock, 8.48 per cent times 1.15, 9.75 per cent; based on inclusion of bonus stock, the return would be 10.43 per cent."

That is, in a sense of the term, it would be reasonable, based on these other ratios, would be for this Company at the start, on the moneys which were invested by it, other than depreciation reserve money, at least 10 per cent.

"The above would suggest that 10 per cent return would be a reasonable return for the American Toll Bridge Company. The American Toll Bridge Company's properties are being amortized on the 6 per cent sinking fund basis so that the average cost of money may be assumed to be made up of bond and stock money and depreciation reserve moneys varying as the reserve increases. The following indicates the fair return based on 1.15 times the average cost of money for the entire period."

Then there is set forth a table showing the years 1926 to 1948 and the percentage of capital for each year that would be represented by moneys invested by the Company and not

retired through the amortization or depreciation reserve, [fol. 751] and in the next column the per cent of the accrued depreciation reserve based upon the application of the 6 per cent sinking fund basis, including the annuity plus the interest on the reserve each year. In the fourth column is shown the average cost of money, taking bonds and stock at 9 per cent and depreciation reserve at 6 per cent, the cost being at the start 8.9676 per cent and ending up in 1948 at 6.0516 per cent. Then in the last column is shown the rate of return which would be considered fair if an allowance of 1.15 times the cost of money were applied. This shows that for 1927 it would be 10.3 per cent, for 1935 it would be 9.473, for 1940 8.68 and in 1947 it would be 7.116. I have shown adjacent to the last column the resultant average for the first 8 years prior to the refinancing, which is 9.986, or in round figures, 10 per cent. 1935 would be 9.473, or in round figures, 9½ per cent, and the average for the balance of the period would be 8⅓ per cent. I mention those because in the computations which follow I have used 10 per cent for the first 8 years, 9 per cent for the year 1935 and 8 per cent for the balance of the period. It might be interesting also to note that the average return for the entire period would be 9 per cent.

Now, there is a chart in the back of the table which shows the data regarding the cost of money as indicated by Tables 1 and 2 for the different utilities. I might state there are one or two points on this curve which do not show in the table because we did not copy more than one page of data; but it indicates in practically 1922, 1923 and 1924 the stable [fol. 752] utilities were obtaining money at about between 6 and 6½ per cent; that the reduction in cost of money started in 1925 and continued through 1927 and 1928, this being the length of the period we took this data for, going down to between 5 and 5½ per cent in 1927, but in 1925 the stable utilities were getting money at about 6 per cent as I indicated from my testimony. Above that point for 1925 is shown, under 1, the cost of the first mortgage bonds, assuming bond discount and expense and no amortization of bonus stock; No. 2 is the cost of the first and second mortgage bonds on the same basis; No. 3, the cost of the first and second mortgage bonds with the amortization of bond discount and expense, which averaged 9.07 per cent for the American Toll Bridge Company. At the righthand part of

the chart is shown the cost of money on mortgage, first mortgage bonds generally, for these major utilities which approximates closely 4 per cent in 1935, when at that same time this Company, with its short time franchise and a bridge operation had a cost of money of 6.65 as shown by item 4. &

Q. Does that complete what you have to offer in connection with that exhibit?

A. Yes, sir.

Q. I will ask you whether you have also prepared an exhibit entitled "Distribution of automobile traffic, Carquinez and Antioch Bridges and Martinez-Benicia Ferry, American Toll Bridge Company"?

A. I have.

Mr. Thelen: If the Commission please, we ask that that exhibit be introduced and marked No. 130.

Commissioner Riley: So received and marked Exhibit 130.

[fols. 753-754] Mr. Thelen: Have you prepared another exhibit entitled "Reported and estimated traffic and revenue under present rates, Carquinez and Antioch Bridges, 1926 to 1948"?

A. I have.

Q. Have you supplied a copy to the Commission?

A. No, I have not.

Mr. Thelen: Then we will do that. If the Commission please, we ask that the exhibit be introduced and marked Exhibit 131.

Commissioner Riley: So received and noted as Exhibit 131.

Q. Now, Mr. Ready, have you prepared another exhibit which is entitled "Estimated earnings, American Toll Bridge Company, 1926 to 1948, present tolls"?

A. Yes, I have.

Mr. Thelen: We would ask that that exhibit be introduced and marked Exhibit 132.

Commissioner Riley: So received and marked, Exhibit 132.



## COMPANY EXHIBIT No. 132

Witness: Lester S. Ready

Estimated Earnings, American Toll Bridge Company,  
1926 to 1948, Present Tolls  
San Francisco, January 19, 1938

CALCULATED BRIDGE  
AMERICAN TOLL BRIDGE COMPANY

PAST & ESTIMATED FUTURE  
OPERATING REVENUE, EXPENSES, RATE BASE  
AND

## RATE OF RETURN

## PRESENT RATES

1926 - 1948

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
(1) Traffic Statistics:													
Vehicular Units		736 085	1 154 097	1 262 101	1 363 579	1 316 198	1 110 001	1 023 604	1 059 440	1 199 340	1 468 052	1 720 768	1 996
Passengers & Pedestrians		1 934 334	2 916 539	3 180 609	3 392 069	3 209 219	2 725 622	2 555 372	2 673 218	3 300 161	3 997 995	4 474 000	4 150
(2) Rate Base (Historical Cost):													
Total As Of December 31st:	\$ 6 239 895	7 258 470	7 472 124	7 616 998	7 939 364	7 954 142	7 955 485	7 946 485	7 946 433	7 945 703	7 946 119	7 946 954	7 946
Average For The Year		7 106 337	7 365 897	7 544 361	7 777 981	7 946 753	7 954 819	7 950 995	7 946 461	7 946 068	7 947 411	7 946 537	7 946
(3) Operating Revenues:													
Tolls		637 699	986 571	1 081 307	1 193 727	1 152 297	1 152 297	975 911	917 117	999 229	1 060 988	1 306 191	1 432
Rents & Miscellaneous	3 388	2 236	236	4 050	9 595	6 220	7 209	7 209	7 234	7 089	7 621	8 128	8
Total	3 388	639 895	986 807	1 085 357	1 203 322	1 158 517	983 120	983 120	924 351	966 258	1 068 609	1 314 319	1 440
(4) Direct Operating Expenses:													
Wages		30 780	45 707	48 971	45 176	48 062	43 548	41 129	38 884	28 409	28 458	29 300	29
Telephone, Power, Light		1 482	2 990	3 958	3 654	3 997	3 125	2 940	2 933	3 007	3 037	3 045	3
Supplies		2 791	3 283	2 260	2 544	3 626	3 164	2 271	2 387	1 196	2 748	1 750	1
Engineering		133	77	14	106	6 802	2 467	3 000	3 278	3 000	2 042	1 531	1
Maintenance - Painting		6		248	530	4 860	15 974	14 271	9 062	6 222	8 211	7 250	7
- Repairs		199	210	541	21	172	747	609	631	656	6 067	758	11
Advertising		21 175	43 886	19 686	18 684	16 103	12 689	9 487	4 209	761	6 067	758	11
Insurance		13 358	27 236	27 370	24 447	25 281	24 312	26 020	23 790	21 970	21 688	21 975	22
Miscellaneous		688	111	381	656	17	200	200	285	203	247	300	
Taxes - Real Estate		38 482	78 853	77 844	72 226	71 204	70 804	61 668	60 587	65 896	66 477	67 675	66
- County Franchise		800	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1
- Street Revenue (2%)		12 755	19 731	21 686	23 875	23 037	19 401	18 242	18 990	21 430	26 125	31 114	28
Total Direct Expenses		122 689	223 164	193 989	193 089	204 361	197 961	181 030	166 176	153 953	166 700	166 198	175
(5) General Operating Expenses:													
Salaries				26 644	23 643	23 470	19 448	19 325	13 611	19 179	19 986	23 248	22
Employees' Retirement												26 520	
Fees of Attorneys, Directors, Trustees, etc.				12 403	12 661	13 527	13 972	17 197	15 840	70 544	19 945	33 628	18
Public Relations (Advertising)				8 143	7 899	11 112	10 128	11 313	11 795	6 041	6 925	29 535	6
Special Services				23 040	4 476	8 112		2 766					
Office Supplies & Expenses				4 074	3 164	3 441	1 488	1 043	947	1 713	2 137	2 267	2
Compensation Insurance				1 141	2 721	1 975	3 299	938	1 194	278	946	1 273	1
Miscellaneous				1 627	4 622	4 149	3 990	3 612	3 154	3 204	3 823	16 732	4
Taxes & License Fees				1 870	1 213	174	163	1 273	2 077	7 295	7 923	16 787	7
Total General Expenses		15 699	72 042	78 942	60 399	65 960	52 488	60 496	48 618	108 214	61 665	118 970	63
(6) Total Direct & General Expenses		168 288	295 206	272 931	253 488	270 321	250 449	241 526	214 794	262 167	228 325	316 168	239
(7) Amortization Of Investment		108 432	188 827	193 916	201 519	207 046	207 389	207 114	206 945	206 908	206 809	206 727	206
(8) Total Expenses Plus Amortization		276 720	484 033	466 847	454 907	477 367	457 778	448 670	421 739	469 075	435 134	522 895	445
(9) Net Income Before Income Taxes	3 388	363 175	902 774	618 510	718 515	681 150	525 342	475 681	514 539	599 534	879 185	1 030 039	994
(10) Income Tax - Federal		5 647		9 470		30 774	14 295	9 789	1 057		13 609	66 223	108
- State (Franchise Tax)													
(11) Net Income After Income Taxes	3 388	357 528	902 774	618 510	739 045	650 376	511 047	465 892	513 482	598 299	865 576	963 816	886
(12) Return - On Rate Base		8.62%	6.82%	8.20%	9.50%	8.18%	6.42%	5.86%	6.41%	7.42%	10.87%	12.12%	10.8
(13) - In Years of 1934, 1935, 1936 & 1937	3 388	57 008	233 756	135 926	38 753	114 299	281 435	329 208	251 181	125 817	229 703	327 853	225
(14) Accumulated Income Return	3 388	53 620	287 376	423 302	462 055	606 354	890 789	1 219 997	1 471 181	1 997 028	1 367 325	1 039 472	813

NOTE: \* - For The 7 Months Period of Operation  
\* - Red Figure



TABLE NO. 4

1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948
1 720 768 4 474 000	1 396 000 4 150 000	1 621 000 4 222 000	1 652 000 4 295 000	1 682 800 4 375 000	1 716 100 4 463 000	1 747 200 4 543 000	1 778 000 4 623 000	1 808 800 4 703 000	1 839 600 4 783 000	1 870 400 4 863 000	218 300 568 000	
7 949 954 7 949 537	7 949 954 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	7 949 537 7 949 537	
1 544 691 8 213	1 432 130 8 213	1 457 510 8 213	1 482 670 8 213	1 510 313 8 213	1 540 169 8 213	1 568 112 8 213	1 595 795 8 213	1 623 398 8 213	1 651 011 8 213	1 678 624 8 213	196 000 1 375	
1 552 934 314 339	1 440 653 314 339	1 465 783 314 339	1 490 913 314 339	1 518 556 314 339	1 548 712 314 339	1 576 355 314 339	1 603 998 314 339	1 631 641 314 339	1 659 284 314 339	1 686 927 314 339	197 375 314 339	
29 300 3 037	29 300 3 045	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	29 700 3 050	5 000 500	
2 716 2 012	1 750 1 531	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	1 750 1 500	300 250	
8 211 6 087	7 250 758	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	7 500 11 100	50 3 750	
100 21 683	300 21 975	300 22 000	300 22 000	300 22 000	300 22 000	300 22 000	300 22 000	300 22 000	300 22 000	300 22 000	50 -	
46 477 1 200	67 675 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	68 000 1 200	3 980 13 770	
26 125 166 700	31 114 166 398	28 618 175 318	29 151 175 851	29 653 176 353	30 206 176 906	30 809 177 509	31 362 169 662	31 915 170 215	32 468 170 768	33 021 171 321	33 574 171 874	
23 986 19 945	23 818 33 628	22 850 18 163	22 900 18 503	22 925 18 524	22 950 18 544	23 000 18 564	23 025 18 605	23 050 18 624	23 100 18 665	23 125 18 685	9 312 9 573	
6 985 2 137	29 535 2 267	6 855 2 168	6 870 2 173	6 877 2 176	6 885 2 178	6 900 2 180	6 908 2 186	6 915 2 190	6 930 2 195	6 937 2 198	- 1 006	
3 883 7 925	16 732 16 767	4 570 7 321	4 580 7 337	4 585 7 348	4 590 7 356	4 600 7 364	4 600 7 371	4 604 7 374	4 608 7 376	4 610 7 378	745 1 459	
28 305 206 889	210 970 206 727	239 200 206 727	239 812 206 727	240 424 206 727	241 036 206 727	241 648 206 727	242 260 206 727	242 872 206 727	243 484 206 727	244 096 206 727	25 363 39 133	
435 134 879 185	522 895 1 030 039	445 927 994 726	446 569 1 009 214	447 211 1 023 702	447 853 1 038 190	448 495 1 052 678	449 137 1 067 166	449 779 1 081 654	450 421 1 096 142	451 063 1 110 630	123 788 226 341	
13 689 845 186	66 223 963 816	108 511 861 189	108 726 863 066	108 941 864 943	109 156 866 820	109 371 868 697	109 586 870 574	109 801 872 451	110 016 874 328	110 231 876 205	143 221 115 774	
10.87% 229 703	12.12% 327 853	10.81% 225 526	11.23% 257 103	11.55% 281 813	11.67% 291 366	11.91% 310 837	12.05% 325 208	12.15% 339 579	12.25% 353 950	12.30% 368 321	11.00% 251 768	
367 329	1 039 172	813 946	956 813	275 030	16 336	327 173	652 381	982 302	1 322 500	1 664 601	2 019 919	1 768 151

**ANYTICH BRIDGE**  
**AMERICAN TOLL BRIDGE COMPANY**

**PAST & ESTIMATED FUTURE**  
**OPERATING REVENUE, EXPENSES, RATE BASE**  
**and**  
**RATE OF RETURN**  
**PRESENT RATES**  
**1926 - 1948**

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
<b>Traffic Statistics:</b>													
Vehicular Units	81 156	108 430	163 436	198 940	199 819	191 050	118 002	121 099	131 652	126 699	116 865	113 110	150 000
Passengers & Pedestrians		211 333	369 090	444 330	426 784	412 944	319 780	246 516	275 222	261 006	294 436	289 100	353 000
<b>Rate Base (Historical Cost):</b>													
Total As Of December 31st	\$1 585 717	1 705 455	1 712 923	1 719 921	1 721 284	1 735 953	1 737 540	1 737 540	1 737 525	1 737 673	1 739 258	1 739 457	
Average For The Year	1 512 941	1 615 586	1 709 189	1 716 422	1 720 602	1 728 639	1 736 716	1 737 540	1 737 532	1 737 999	1 738 466	1 739 358	1 739 358
<b>Operating Revenues:</b>													
Tolls	88 946	94 966	135 908	166 691	165 608	157 799	121 930	99 436	107 793	107 465	126 791	125 120	135 000
Rents & Miscellaneous				25	120	120	120	120	120	120	120	120	120
Total	88 946	94 966	135 908	166 716	165 728	157 879	122 050	99 556	107 913	107 585	126 911	125 240	135 120
<b>Direct Operating Expenses:</b>													
Wages	10 811	11 463	10 782	10 665	11 190	12 394	11 275	11 225	11 720	9 705	8 948	9 970	9 940
Telephone, Power, Light	1 070	1 799	1 422	1 381	1 358	1 422	1 343	1 538	1 396	1 375	1 398	1 270	1 270
Supplies	960	266	610	366	449	342	383	288	374	246	119	200	200
Engineering					211	1 460	950	600	600	933	406	306	300
Maintenance - Painting													4 300
- Repairs	189	50	110	92	114	25	357	1 206	434	7 120	1 773	2 866	5 000
Advertising	8 556	9 844	8 716	3 558	4 050	2 760	2 976	1 933	1 715	298			
Insurance	5 780	7 735	11 587	12 464	11 660	11 568	11 367	11 540	10 851	7 640	7 416	8 546	8 500
Miscellaneous	201	343	63	25	25	14	237	65	86	32	42	19	25
Taxes - Real Estate	7 432	17 562	21 331	21 934	20 425	18 462	17 315	14 778	12 792	12 867	12 603	12 448	12 450
- County Franchise	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200
- Gross Revenue (2%)	1 779	1 899	2 718	3 333	3 312	3 155	2 438	1 989	2 136	2 163	2 536	2 502	2 700
Total Direct Expenses	37 981	52 161	58 999	55 018	54 324	52 802	49 847	46 442	43 304	43 579	36 433	39 329	45 885
<b>General Operating Expenses:</b>													
Salaries				3 954	3 255	3 290	2 541	2 136	1 565	2 451	2 615	3 050	2 150
Employees' Retirement												3 480	
Fees of Attorneys, Directors, Trustees, etc.				1 841	1 743	1 894	1 824	1 900	1 826	9 015	2 617	4 413	1 737
Public Relations (Advertising)				1 209	1 087	1 558	1 322	1 250	1 360	772	909	3 876	645
Special Services				3 439	616	1 138	306	306					
Office Supplies & Expenses				605	436	481	194	115	109	219	280	208	232
Compensation Insurance				169	375	277	431	104	138	35	124	167	125
Miscellaneous				242	1 075	972	938	852	739	700	505	2 156	430
Taxes & License Fees				278	167	24	21	472	240	927	1 040	2 200	609
Total General Expenses	24 000	6 773	9 949	11 717	8 754	9 634	7 271	7 135	5 981	14 119	8 080	19 660	6 008
Total Direct & General Expenses	61 981	58 934	68 948	66 735	63 078	62 436	57 118	53 577	49 285	57 698	44 513	59 009	51 893
Amortization Of Investment	33 215	35 685	37 269	37 451	37 563	37 844	38 132	38 160	38 160	38 160	38 160	38 160	38 160
Total Expenses Plus Amortization	95 196	94 619	106 217	104 186	100 641	100 280	95 250	91 737	87 445	95 858	82 673	97 169	90 053
Net Income Before Income Taxes	6 250	347	30 091	62 530	65 087	57 999	26 800	7 819	20 468	11 727	44 228	28 071	45 067
Income Tax - Federal	2 455												16 338
- State (Franchise Tax)													2 351
Net Income After Income Taxes	8 705	347	30 091	62 530	65 087	57 999	26 800	7 819	20 468	11 727	44 228	28 071	63 756
Return - On Rate Base	0.56%	0.02%	1.76%	3.61%	3.78%	3.33%	1.54%	0.45%	1.18%	0.67%	2.54%	1.61%	3.67%
- In Excess of 10% thro 1934, 9%	162 999	164 212	140 828	109 112	106 973	115 263	116 874	165 935	153 206	114 657	94 810	111 076	75 393
- In 1935 & 8% for 1936-48													
Accumulated Excess Return	162 999	327 211	468 039	577 151	684 124	799 387	946 261	1 112 196	1 265 482	1 410 139	1 504 908	1 616 066	1 691 499

Table No. 5

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948
445	113 110	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	75 000
436	289 100	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	151 500
456	1 739 457	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358
791	125 120	135 000	135 000	135 000	135 000	135 000	135 000	135 000	135 000	135 000	135 000	67 500
120	120	120	120	120	120	120	120	120	120	120	120	60
911	125 240	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	67 560
948	9 970	9 940	9 940	9 940	9 940	9 940	9 940	9 940	9 940	9 940	9 940	4 970
388	1 270	1 270	1 270	1 270	1 270	1 270	1 270	1 270	1 270	1 270	1 270	635
119	200	200	200	200	200	200	200	200	200	200	200	100
406	306	300	300	300	300	300	300	300	300	300	300	150
773	2 866	5 000	5 000	5 000	5 000	5 000	1 000	1 000	1 000	1 000	1 000	-
416	8 546	8 500	8 500	8 500	8 500	8 500	8 500	8 500	8 500	8 500	8 500	4 250
42	19	25	25	25	25	25	25	25	25	25	25	12
603	12 448	12 450	12 450	12 450	12 450	12 450	12 450	12 450	12 450	12 450	12 450	-
200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	1 200	-
536	2 502	2 700	2 700	2 700	2 700	2 700	2 700	2 700	2 700	2 700	2 700	1 350
433	39 385	45 885	45 885	45 885	45 885	45 885	38 085	38 085	38 085	38 085	38 085	11 467
615	3 050	2 150	2 100	2 075	2 050	2 000	1 975	1 950	1 900	1 875	1 850	3 188
617	3 480											
909	4 413	1 737	1 697	1 676	1 656	1 616	1 595	1 576	1 535	1 515	1 495	3 277
	3 876	645	630	623	615	600	592	585	570	563	555	-
280	208	232	227	224	222	216	214	210	205	202	200	344
124	167	125	122	120	119	116	115	113	110	109	107	92
505	2 196	430	420	415	410	400	398	396	392	388	385	255
040	2 200	689	673	662	654	646	638	630	622	614	606	1 526
080	19 680	6 008	5 869	5 825	5 756	5 615	5 534	5 466	5 331	5 289	5 221	8 682
523	39 009	51 893	51 794	51 710	51 641	47 700	43 435	43 351	43 216	43 174	43 106	20 149
160	38 160	38 160	38 160	38 160	38 160	38 160	38 160	38 160	38 160	38 160	38 160	19 050
683	97 149	90 053	89 914	89 870	89 801	85 860	81 575	81 511	81 376	81 334	81 266	39 239
828	28 071	45 067	45 206	45 290	45 339	45 260	53 541	53 609	53 744	53 786	53 854	28 321
		16 338	12 305	10 717	9 669	4 692	2 733	106	4 267	6 631	8 081	9 446
		2 351	1 479	2 464	1 370	799	795	364	79	242	391	793
228	28 071	63 756	58 990	58 431	56 358	54 751	57 069	53 865	40 556	46 913	45 382	16 082
545	1.615	3.675	3.375	3.345	3.245	3.155	3.285	3.105	2.655	2.705	2.615	2.085
649	111.078	.75 393	80 199	80 718	82 791	84 358	82 080	85 234	89 993	92 236	93 767	51 462
908	1 616 066	1 691 499	1 771 618	1 852 336	1 935 127	2 019 525	2 101 605	2 186 889	2 270 482	2 360 718	2 462 485	2 513 977



**PAST & ESTIMATED FUTURE  
OPERATING REVENUE, EXPENSES, RATE BASE  
AND  
RATE OF RETURN  
PRESENT VALUE  
AMERICAN TOLL BRIDGE COMPANY  
1926-1948**

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938
<b>Traffic Statistics:</b>													
Vehicular Units													
- Carquines		736 005	1 151 097	1 262 101	1 363 579	1 316 198	1 110 001	1 023 604	1 099 440	1 199 340	1 468 052	1 720 768	1 996 000
- Antioch	81 156	108 430	163 436	198 940	199 849	191 050	118 002	121 099	131 652	126 699	116 865	113 110	150 000
Total	81 156	844 515	1 317 533	1 461 041	1 563 428	1 507 248	1 258 003	1 144 663	1 191 092	1 285 999	1 614 917	1 863 878	1 746 000
Passengers & Pedestrians													
- Carquines		1 934 334	2 916 539	3 180 609	3 392 069	3 209 219	2 725 622	2 555 372	2 673 216	3 008 461	3 997 995	4 474 000	4 150 000
- Antioch		241 333	349 090	444 330	428 784	412 944	319 780	246 516	275 222	261 006	296 436	289 100	303 000
Total		2 175 667	3 265 629	3 624 939	3 820 853	3 622 163	3 045 402	2 801 888	2 948 440	3 269 467	4 294 431	4 763 100	4 453 000
<b>Rate Base (Historical Cost):</b>													
Average For The Year -													
- Carquines \$		7 106 337	7 365 897	7 514 361	7 777 981	7 946 753	7 954 819	7 950 995	7 946 464	7 946 068	7 947 411	7 949 537	7 949 537
- Antioch	1 512 941	1 645 586	1 709 189	1 716 422	1 720 608	1 728 639	1 736 716	1 737 540	1 737 532	1 737 999	1 738 466	1 739 358	1 739 358
Total	1 512 941	8 751 923	9 074 086	9 230 783	9 498 589	9 675 392	9 691 565	9 688 535	9 683 996	9 683 667	9 685 877	9 688 895	9 688 895
<b>Operating Revenues:</b>													
- Carquines \$	3 388	639 895	986 807	1 085 337	1 203 322	1 158 517	983 120	984 351	966 258	1 068 609	1 314 319	1 552 934	1 440 650
- Antioch	88 946	94 966	135 908	166 716	165 728	157 879	122 050	99 556	107 913	107 585	126 911	125 240	135 120
Total	92 334	734 861	1 122 715	1 252 073	1 369 050	1 316 396	1 105 170	1 023 907	1 074 171	1 176 194	1 441 230	1 678 174	1 575 770
<b>Direct Operating Expenses:</b>													
- Carquines		122 689	223 164	193 989	193 089	204 361	197 961	181 030	166 176	153 953	166 700	166 198	175 340
- Antioch	37 981	52 161	58 999	55 018	54 324	52 802	49 847	46 442	43 304	43 579	36 433	39 329	45 880
Total	37 981	174 790	281 763	249 007	247 413	257 163	247 808	227 472	209 480	197 532	203 133	205 527	221 220
<b>General Operating Expenses:</b>													
Carquines & Antioch	24 000	52 432	81 991	90 699	69 153	75 594	99 799	67 631	54 599	122 333	69 715	169 650	69 840
Total Direct & General Expenses	61 981	227 222	363 754	339 666	316 566	332 757	307 567	295 103	264 079	319 865	272 848	375 177	291 060
Amortization Of Investment	33 215	144 117	226 096	231 367	238 882	244 890	245 461	245 304	245 105	245 068	244 969	244 887	244 880
Total Expenses Plus Amortization	95 196	371 339	589 850	571 033	555 448	577 647	553 028	540 407	509 184	564 933	517 817	620 064	535 940
Net Income Before Income Taxes	2 862	363 522	532 865	681 040	813 602	738 749	552 142	483 500	564 987	611 261	923 413	1 058 000	1 039 790
Income Tax - Federal	2 455	5 647			9 470	30 774	14 295	9 789	1 057	10 235	13 689	66 223	92 170
- State (Franchise Tax)													22 370
Net Income After Income Taxes	5 317	357 875	532 865	681 040	804 132	707 975	537 847	473 711	563 930	601 026	909 724	991 887	925 240
Return - On Rate Base	0.31%	6.13%	5.87%	7.35%	8.47%	7.32%	5.59%	4.89%	5.82%	6.21%	9.39%	10.24%	9.50%
- In Excess of 10% thro 1934	199 611	221 220	374 584	245 038	145 726	299 562	431 309	495 143	404 470	270 504	134 854	216 775	150 110
- Accumulated Excess Return	199 611	380 832	755 415	1 000 453	1 146 179	1 405 741	1 837 050	2 332 193	2 736 663	3 007 167	2 872 313	2 655 538	2 505 140

NOTE: \* -- For the 7 months Period of Operation  
 \* -- Red Figure

TABLE NO. 6

	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948
72	1 720 768	1 596 000	1 624 000	1 652 000	1 582 800	1 716 400	1 747 200	1 778 000	1 808 800	1 839 600	1 870 400	218 300
75	113 110	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	150 000	75 000
77	1 865 878	1 746 000	1 774 000	1 002 000	1 832 800	1 866 400	1 897 200	1 928 000	1 958 800	1 989 600	2 020 400	293 300
79	4 474 000	4 150 000	4 222 000	4 295 000	4 375 000	4 463 000	4 543 000	4 623 000	4 703 000	4 783 000	4 863 000	568 000
86	289 100	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	303 000	151 500
91	4 765 100	4 453 000	4 525 000	4 598 000	4 678 000	4 766 000	4 846 000	4 926 000	5 006 000	5 086 000	5 166 000	719 500
111	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537
146	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358
177	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895
189	1 552 934	1 440 653	1 465 783	1 490 913	1 518 956	1 548 712	1 576 355	1 603 998	1 631 641	1 659 284	1 686 927	197 375
211	125 240	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	135 120	67 560
230	1 678 174	1 575 773	1 600 903	1 626 033	1 653 676	1 683 832	1 711 475	1 739 118	1 766 761	1 794 404	1 822 047	264 935
700	166 198	175 348	175 851	176 353	176 906	177 509	169 662	170 215	170 768	171 321	171 874	13 770
133	39 329	45 885	45 885	45 885	45 885	46 085	38 085	38 085	38 085	38 085	38 085	11 467
135	205 527	221 233	221 736	222 238	222 791	219 994	207 747	208 300	208 853	209 406	209 959	25 237
715	169 650	69 260	69 860	70 190	70 190	70 190	67 520	67 520	67 520	67 850	67 850	34 045
848	375 177	291 093	291 596	292 428	292 981	289 784	275 267	275 820	276 373	277 256	277 809	59 282
969	244 887	244 887	244 887	244 887	244 887	244 887	244 887	244 887	244 887	244 887	244 887	53 544
817	620 064	535 980	536 483	537 315	537 868	534 671	520 154	520 707	521 260	522 143	522 696	112 826
113	1 058 110	1 039 793	1 064 420	1 088 718	1 115 808	1 149 161	1 191 321	1 218 411	1 245 501	1 272 261	1 299 351	152 109
689	66 223	92 173	90 421	90 472	107 605	120 736	143 569	165 988	184 411	209 033	222 503	235 787
724	991 887	925 245	952 056	976 207	983 687	1 001 551	1 018 240	1 019 719	1 025 717	1 024 980	1 036 660	14 014
854	10 244	9 554	9 834	10 084	10 154	10 344	10 514	10 524	10 594	10 594	10 704	5 624
854	216 775	150 133	176 944	201 095	208 575	226 439	243 128	244 657	250 605	249 868	261 548	303 260
113	2 695 530	2 505 405	2 328 461	2 127 366	1 918 791	1 692 352	1 449 224	1 204 587	953 982	704 114	442 566	745 826



## COMPUTATION OF RATE BASE, YEAR BY YEAR

## AMERICAN TOLL BRIDGE COMPANY

## INVESTMENT BASIS

	1925	1926	1927		1928	1929	1930	1931	1932
			As of May 31	As of Dec. 31					
<b>LANDS (Investment Excl. of "Tidelands")</b>									
Carquinez Bridge		62 084 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	
Antioch Bridge									
<b>FURNITURE &amp; EQUIPMENT</b>									
Total	1 591 95	5 294 70	6 150 76	7 006 83	10 296 18	15 009 41	15 009 41	15 081 91	
Carq. 80.762%	1 285 69	4 276 11	4 967 48	5 658 86	8 315 40	12 121 90	12 121 90	12 180 45	
Ant. 19.238%	306 26	1 018 59		1 347 97	1 980 78	2 887 51	2 887 51	2 901 46	
<b>CARQUINEZ BRIDGE</b>		\$6 173 494 56	\$6 882 401 19	\$7 185 976 42	\$7 396 974 34	\$7 537 641 49	\$7 860 407 28	\$7 875 127 17	\$7 875 127 17
<b>ANTIOCH BRIDGE</b>									
Organiz.	108 228 25	111 376 05		113 554 68	113 554 68	113 554 68	113 554 68	113 554 68	113 554 68
Land	1 500 00	1 500 00		1 500 00	1 500 00	1 500 00	1 500 00	1 500 00	1 500 00
Ferry Franchise, etc.		50 000 00		50 000 00	50 000 00	50 000 00	50 000 00	50 000 00	50 000 00
Constn.	128 051 96	128 051 86		128 051 86	128 051 86	128 051 86	128 051 86	128 051 86	128 051 86
Bridge	1 262 077 60	1 293 770 92		1 411 000 94	1 417 835 64	1 423 926 54	1 425 290 31	1 439 945 15	1 439 945 15
Total	1 499 857 71	1 584 698 83		1 704 107 48	1 710 942 18	1 717 033 08	1 718 396 85	1 733 051 69	1 733 051 69

## RECAPITULATION, &amp; DERIVATION OF "AVERAGE FOR YEAR"

<b>CARQUINEZ BRIDGE (Opened to Traffic May 21, 1927)</b>									
Lands		62 084 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62
Furn. & Equipment		4 276 11	4 967 48	5 658 86	8 315 40	12 121 90	12 121 90	12 180 45	12 180 45
Bridge		6 173 494 56	6 882 401 19	7 185 976 42	7 396 974 34	7 537 641 49	7 860 407 28	7 875 127 17	7 875 127 17
Total		6 239 855 29	6 954 203 29	7 258 469 96	7 472 124 36	7 616 598 01	7 939 363 80	7 954 142 24	7 954 142 24
Aver.			\$ 7 106 337*	7 365 297	7 544 361	7 777 981	7 946 753	7 946 753	7 946 753

\* For The 7 Months Period of Operation

## ANTIOCH BRIDGE (Opened To Traffic January 1, 1926)

Lands									
Furn. & Equipment	306 26	1 018 59		1 347 97	1 980 78	2 887 51	2 887 51	2 901 46	
Bridge	1 499 857 51	1 584 698 83		1 704 107 48	1 710 942 18	1 717 033 08	1 718 396 85	1 733 051 69	1 733 051 69
Total	1 500 163 97	1 585 717 42		1 705 455 45	1 712 922 96	1 719 920 59	1 721 284 36	1 735 953 15	1 735 953 15
Aver.		\$ 1 542 941		1 645 586	1 709 189	1 716 422	1 720 602	1 728 619	1 728 619

Note: The data appearing herein for the Carquinez Bridge are primarily based upon analysis, of book figures as made for "Interest During The Antioch Bridge figures reflect a consideration of the data obtained thru analysis of Carquinez Bridge figures, but are primarily appearing in the Company's report to Securities Exchange Commission. "Lands" are based on figures supplied by Mr. Whitmire. Furniture and Equipment totals for years prior to 1937 are based on the report referred to and details in Haskins & Sells audit report, figure being as per Mr. Mitchell's report.

YEAR BY YEAR

Table No. 7

COMPANY

Amounts As Of Dec. 31 (Except as noted for 1927)

1931	1932	1933	1934	1935	1936	1937
834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62 295 00	66 834 62 295 00
009 41	15 081 91	15 920 41	15 920 41	15 842 91	16 612 82	23 319 92
121 90	12 180 45	12 857 64	12 857 64	12 795 05	13 416 85	18 833 63
887 51	2 901 46	3 062 77	3 062 77	3 047 86	3 195 97	4 486 29
407 28	\$7 875 127 17	\$7 875 803 17	\$7 866 803 17	\$7 866 803 17	\$7 865 451 17	\$7 863 451 17
554 68	113 554 68	113 554 68	113 554 68	113 554 68	113 554 68	113 554 68
500 00	1 500 00	1 500 00	1 500 00	1 500 00	1 500 00	1 500 00
000 00	50 000 00	50 000 00	50 000 00	50 000 00	50 000 00	50 000 00
051 86	128 051 86	128 051 86	128 051 86	128 051 86	128 051 86	128 051 86
290 31	1 439 945 15	1 441 370 48	1 441 370 48	1 441 370 48	1 441 370 48	1 441 370 48
396 85	1 733 051 69	1 734 477 02	1 734 477 02	1 734 477 02	1 734 477 02	1 734 477 02

"AVERAGE FOR YEAR"

834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62	66 834 62
121 90	12 180 45	12 857 64	12 857 64	12 795 05	13 416 85	18 833 63	19 668 23
407 28	7 875 127 17	7 875 803 17	7 866 803 17	7 866 803 17	7 865 451 17	7 863 451 17	7 863 451 17
363 80	7 954 142 24	7 955 195 43	7 946 195 43	7 946 432 84	7 945 702 64	7 949 119 42	7 949 954 02
981	7 946 753	7 954 819	7 950 995	7 946 464	7 946 068	7 947 411	7 949 537
887 51	2 901 46	3 062 77	3 062 77	3 047 86	3 195 97	4 486 29	4 685 09
396 85	1 733 051 69	1 734 477 02	1 734 477 02	1 734 477 02	1 734 477 02	1 734 477 02	1 734 477 02
284 36	1 735 953 15	1 737 539 79	1 737 539 79	1 737 524 88	1 737 672 99	1 739 258 31	1 735 457 11
602	1 728 619	1 736 746	1 737 539 79	1 737 532	1 737 599	1 738 466	1 739 358

made for "Interest During Construction" study.  
 figures but are primarily based on amounts  
 audited by L. Whitmire.  
 Haskins & Sells audit reports; the 1937





[fol. 759] Mr. Thelen: As the title indicates, I take it that this is an earning exhibit and on the basis of the present tolls, covering the period of 1926 to 1948, is that right?

A. That is correct.

Q. Will you please explain it in your own way, Mr. Ready?

A. In this exhibit I would like to start from the last table first in order to give the foundation for the capital that has been used in determining the earnings of the Company. After considering the estimated reasonable historical cost, as set forth in Exhibit 117, and also the possible modifications of the book cost which might be made, including the addition of interest during construction and the possibility that—probability that the Dunn payment should be charged to cost of money rather than overhead—I came to the conclusion that the lowest figure that reasonably could be applied to the property would be the book costs as they stood on the books. It is true that some items might be questioned, but that on the other hand, the erroneous inclusion of interest during construction on the books, and only the interest and amortization of bond discount on the bonds, instead of the interest on the entire capital, plus the possibility of additions on account of the franchise of the Rodeo-Vallejo Ferry, that those factors would more than offset any possible modification. And also, in view of the fact that the books could be used to determine the capital throughout the entire period without making numerous adjustments, I made this study on the basis of the book costs of the Carquinez and Antioch Bridges, as distinguished from the reasonable historical cost or any other item.

[fol. 760] In this Table 7 we start out with the lands which I testified to in Exhibit 117 as applicable to the Carquinez Bridge and the added lands in 1936 and 1937 for the Antioch Bridge. Then follows the allocation of furniture and equipment year by year between the two bridges. Then is given the total cost of the Carquinez Bridge, exclusive of lands and furniture and fixtures, which in 1927 ties in with Mr. Coleman's report and also with the other exhibits, that is, \$7,863,451.17. Then there is set up the Antioch Bridge as determined largely from the reports of the Company to the Securities Exchange Commission; that is to say, the net additions and betterments, with the capital by years to tie in with the figure as of 1937. Then under the heading

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"Carquinez Bridge open to traffic May 21, 1927," and under the main heading "Recapitulation, and derivation of 'average for year'", we show the average capital by years from 1927 to 1937 for the Carquinez Bridge and follow with the average capital for the Antioch Bridge. The average capital for the last 7 months of 1927 for the Carquinez Bridge was \$7,106,337, compared with the capital of 1937 of \$7,949,537. The Antioch Bridge, similarly, is shown for 1926 at \$1,542,941, compared with \$1,739,358 for 1937. That gives the capital by years for the Carquinez and Antioch Bridges from the date of opening to 1937. Then for 1938 to the end of the period the capital has been taken as the same that it was for December 31, 1937.

I would next refer to the detailed table No. 4 which will later be summarized in Table No. 1. This table is pretty heavy in figures, I realize, and maybe a little bit difficult [fol. 761] to follow. This sets forth the estimated earnings, and actual earnings and estimated earnings of the Carquinez Bridge of the American Toll Bridge Company from 1926 to 1948. Under item 1 is set forth the statistics as to the number of vehicles crossing the bridge and the number of passengers or pedestrians, as determined from the actual records and indicated in the preceding exhibit. Item 2 is a rate base which has been taken from the table I just referred to, Table 7, both as to the end of the year and the average for the year. Item 3 shows the operating revenues for the period from 1926 to 1937 as reported, and the estimated revenues for the remainder of the period. Under the item of "Rent and miscellaneous revenue" have been included the rents from the Carquinez Inn, from the Miller house and also the rents, amortization of prepaid rents, for operation of pipes and other facilities across the bridge. The miscellaneous interest and dividend earnings have not been included, as not representing an operating revenue of the bridge but dividends and interest from other sources. The operating expenses are next shown. Those were actually reported for the years 1927 to 1937, with some estimates for the year 1937 owing to the fact the books had not been closed at the time we prepared the exhibit. That applies to all the items there set forth. Taxes, real estate, county franchise and gross revenue taxes are included under the direct expenses. Then under item 5 is the allocation of the general operating expenses. From 1927 to 1937

they are as actually allocated by the Company, as we determined from the books. Then is shown the total under item [fol. 762] 6, total direct and general expenses. Item 7 is the amortization of investment and is the annuity on a 6 per cent sinking fund basis applied to the total capital of the bridge as indicated under item No. 2. That is, we computed the annuity which, at 6 per cent, would amortize the investment throughout the life. You will notice it is about on an average \$206,000 or \$207,000. It differs from the amount shown in the Company's books, in that, those amounts show the interest upon the accrued depreciation but, as this is based upon a return upon the investment new, on the basis of rates indicated by the exhibit on cost of money and fair rate of return, the annuity only is included. Following that is the item of net income before income tax, and then the deduction of income tax as computed, the total income taxes for the Company applied to the Carquinez Bridge for the years 1927 to 1937. Then it shows net income and the rate of return upon the rate base, showing a return in 1927 of 8.62, increasing to  $9\frac{1}{2}$  in 1930, dropping to 5.86 in 1933 and increasing to 12.12 in 1937. At the bottom of the page, line 13, is shown the earnings in excess of 10 per cent return for the period through 1934, 9 per cent in 1935 and 8 per cent for 1936 to 1948. And in line 14 is shown the accumulation of that excess without interest. That shows at the end of 1937 they had failed to earn a return of 10 per cent, 9 and 8 per cent by \$1,039,472. Referring now to the portion which deals with 1938 to 1948—

Mr. Thelen: Pardon me, before you get to that, you referred to line 13 as showing figures in excess of a 10 per cent return. To a considerable extent those figures show [fol. 763] a deficit below a 10 per cent return, do they not?

A. All of those figures marked with an asterisk represent a deficit below 10 per cent return up to 1935, a deficit below 9 per cent return in 1935 and then it shows a profit in excess of 8 per cent return in 1936 and 1937. In my exhibit, in discussing rate of return, you will remember that rate of return, if based on 1.15 times the cost of money, would average for 1936 to 1947 8.33, as compared with the cost of—rate of 8 per cent I have set forth here. As a matter of fact, if we take it on a strict application of the 1.15 per cent return set forth in that preceding exhibit, the return for 1935 would

have been 9.47 and 1936 would have been 9.33 instead of 8 per cent.

For the period 1938 to 1947 I have estimated the operating expenses for the Carquinez Bridge, direct expenses based upon an analysis of expenses for 1936 and 1937, and the main changes which I wish to call attention to are in the item of repairs, where I have included for 1938 to 1942 \$10,000 a year for extra maintenance and repair work which Mr. Gerwick testified to, and thereafter included an item of \$3,000 for the inspection and maintenance of the bridge, exclusive of painting—that is, the \$10,000 is included in the total item of \$11,400 showing up under “repairs”. Other than that, the direct operating expenses are in general fairly comparable to those in the years 1935, 1936 and 1937; in fact, if anything, slightly lower. When we came to general operating expenses we estimated those for the American Toll Bridge Company as a whole and then for the years 1938 and 1947 allocated those total expenses on a [fol. 764] gross revenue basis between the two bridges, rather than the basis heretofore used. I appreciate that that is an arbitrary basis in one sense, but we came to the conclusion it was more to the Antioch Bridge than the out-of-pocket cost of managing the Antioch Bridge, but it was one basis that is very often used particularly where one of the properties is earning a low return. The basis heretofore has been from 10 to 11½ per cent, I believe, or more; and this would, of course, result in somewhat less than 10 per cent of the general expenses chargeable to the Antioch Bridge. The amount shown here is a proportion of the total general expense which has been allocated to the Carquinez Bridge. Now, certain items do not repeat themselves. For instance, the item of employees’ retirement, which totaled for 1937 \$30,000, is not a recurring item. The item of fees for attorneys, directors, and so forth, has been materially reduced below what was done for either 1935 or 1937, as it is not contemplated that the conditions would call for a repetition of those expenditures. The item of miscellaneous, totaling \$16,767 for 1937 includes all of the expenses that the Company has incurred up to December 31st in connection with the present rate proceeding, together with other expenses which have been charged to that item. In the succeeding 5 years there has been included \$4,000 a year as an estimated amortization of any further

expenses in connection with the rate proceeding, estimated to approximate \$20,000. The item of taxes and license fees needs explanation in this respect, that in that item during 1935, 1936 and 1937 was included the State franchise tax [fol. 765] on the net revenue of the Company. It is, however, directly connected with the net revenue of the Company and, therefore, can not be estimated except by putting it over with the Federal income tax. So, for the succeeding years that item has been eliminated from that particular account. The balance of the item is made up largely of the Social Security taxes, unemployment taxes, capital stock tax and similar items, and on the basis of the payroll we estimated those taxes from year to year, applying the tax rates which were applicable from year to year, there being an increase in certain of those rates during the remaining period, and that accounts for the increase in that item. The amortization of investment I have already explained. The income tax on this particular table has been based upon computing both the State and Federal tax on the income that would result from this gross revenue, applied to the Carquinez Bridge. The situation is somewhat this way, that in allocating the costs, capital costs, of bond issue between the two bridges we find somewhat less bond interest and amortization charged to the Carquinez Bridge than to the total. We, therefore, computed in detail, on the basis of the present State and Federal income tax rates and laws, the Federal income tax applicable to the Carquinez Bridge, and the State franchise tax applicable to the Carquinez Bridge, for the remaining period of the franchise. And I want to call particular attention to the steady increase in the Federal income tax and in the State tax and the fact that in 1948 the income tax is in excess of the gross revenue [fol. 766] of the bridge. That is due to the fact that the Company has accrued its taxes on the payment basis, rather than accrual basis, and the income tax of 1937 is the income tax on 1936 revenue, so the income tax of 1948 is the income tax on 1947 revenue plus, in this case, that I added in a few thousand dollars of income tax on the 1948 revenue because the Company would presumably be closed out and would have to pay it. So in 1948 the income tax, if the present rates are continued, would be \$226,341, and the State tax would be \$43,221. The reason for that steady increase in income tax is, of course, both the fact that the Company's



income is estimated to increase, as well as the fact that, as the years progress, the deductions allowed in connection with the income tax computations materially decrease. That is, the deductions that are particularly changing are the interest upon the bonds and the amortization of bond discount and expense. Under the provisions the amount of amortization and bond discount and expense is heavy, particularly heavy in 1939-1940, and entirely eliminated after 1945, and the interest and amortization of bond discount and expense resulting in a fairly large deduction up to the present time and then finally no deduction after 1945. Now, that throws the income into the surtax and excess profits tax basis that otherwise would not come in. It throws also the normal income into the 15 per cent bracket. I went through this four times in detail, and if anybody wants to know about it I will try to advise them. I think you will find it quite interesting.

[fol. 767] Q. Isn't the reason for the increasing Federal income taxes largely due to the fact that items, which under the law may be deducted in computing the income tax, grow less year by year, particularly that item of interest on bonds and the amortization of discount?

A. That is the major item that causes it, plus the fact that in any concern that has a limited franchise and makes little in the first few years, if it makes up what it doesn't make in the first few years, then it has to pay an excess profits tax on what it makes up in the last few years.

I think, as to the summary figures here we better wait until we look at the first three tables in this exhibit. Table 5 is a comparable table for the Antioch Bridge, and without going into detail except to point out that certain items have been increased to take care of the special maintenance of the bridge as testified to by Mr. Gerwick for the period 1938 to 1942, I feel in both of these cases that the practice of amortizing that deferred maintenance over a period of 5 years was fairer than to attempt to charge it into one particular year; therefore, I have allocated it over that period.

The Witness: The sixth table is a showing for the composite of the two bridges, the American Toll Bridge Company as a whole. The data for the two bridges are added together as to traffic, revenue, capital and expenses. The income tax, both State and Federal, however, has been computed on the composite earnings of the two bridges. I



failed to point out in Table 5 that, due to the fact the Antioch [fol. 768] Bridge was earning a very low return, it would in effect imply a negative income tax for several years; that is, it is possibly like eleemosynary institutions, you can deduct your losses or gifts to the poor bridge. And by allocating bond interest, bond cost, interest, sinking fund and retirements you determine a higher income tax to the Carquinez Bridge than the income tax to the total Company, so that due to that fact, the failure to earn of the Antioch Bridge, it reduces the income tax that otherwise would be applicable to the Company as a whole. In table 6 the income tax is computed for the entire company—

Mr. Rowell: Pardon me, I assume then, Mr. Ready, you are supposing the continuance of a consolidated return over the entire period?

A. Oh, yes; only in allocating between the two does this affect the curve. Mr. Hunter's exhibit followed much the same basis, in that they computed the income tax of the Carquinez Bridge separate from the Antioch. If you do that you get a higher income tax than you get for the total Company, and that is the same basis followed here.

Mr. Thelen: As I understand it, you have done both: You have taken the Carquinez and the Antioch Bridge separately, first, and then you have put them together in a consolidated exhibit?

A. No, I have computed it on the Carquinez Bridge and then on the Company as a whole, and the difference between the Carquinez Bridge income tax and the Company income tax is the remaining income tax applicable to the Antioch Bridge. Now, that results in a credit against the Carquinez Bridge income tax.

[fol. 769] Q. Your figures do show the situation separately as to the Carquinez Bridge, but in another place you show the situation for the Company as a whole?

A. That is correct. Table 6 shows it in detail.

Mr. Thelen: Have you prepared an exhibit entitled "Estimated increase in automobile traffic which would result from reduction of tolls. Suggested by J. G. Hunter"?

A. Yes, I have.

Mr. Thelen: We ask that that exhibit be introduced as No.

133.

Commissioner Riley: Exhibit 133, so noted.

Mr. Thelen: As I understand it, Mr. Ready, in the preceding exhibit you estimated earnings based on present tolls?

A. That is correct.

Q. And as I understand it, you are now looking ahead to the subject of the possible effect of decrease in tolls in stimulating other volume of traffic?

A. That is correct.

Q. And this particular exhibit has been prepared in connection with that matter, has it not?

A. Yes.

Q. Now, if you will please explain the exhibit in your own way, Mr. Ready.

A. Of course, the object of this analysis in the ultimate is to make possible the estimating of the revenue that the bridge might obtain if the rates were reduced to those suggested by Mr. Hunter, that is, 50 cents per vehicle, including 5 passengers, or a driver and 4 passengers, the ultimate object being, of course, to determine the revenue which might be obtained were these rates established.

[fol. 770] My conclusion is that, all factors considered, the stimulation of traffic, assuming a 50-cent toll, should not exceed 11 per cent.

Commissioner Riley: You say the study is made exclusively on automobiles. Nevertheless, in your calculations you have taken in all types of vehicles over the bridge, have you not?

A. As to revenue, we have included all the revenue from all classes of service, but in the question of stimulation of traffic we have dealt with automobiles only and nothing for trucks and busses. This entire distribution of vehicles is based on automobiles and not automobiles and busses and trucks.

Mr. Thelen: That is because Mr. Hunter's proposal was limited to a reduction in passenger automobiles, was it not?

A. Yes. The fares over the bridge, as he pointed out, for trucks and, I believe, for busses, is equal or lower than they are across the Bay Bridge at the present time.

Q. Now, Mr. Ready, having finally gotten a figure which represents your judgment as to the stimulation or increase in automobile passenger traffic, which would follow if the cut suggested by Mr. Hunter were made effective, I assume that you are now in a position to prepare an exhibit show-

g, under Mr. Hunter's proposal, assumed traffic, assumed  
venue, operating expenses and net income if his proposal  
ere worked out?

A. That is correct.

Q. And is that a subject on which you have prepared your  
ert exhibit?

A. Yes.

Mr. Thelen: If the Commission pleases, we now ask that  
[Vol. 771] an exhibit consisting of four pages be introduced  
and marked Exhibit No. 134.

(Here follow four photolithographs, Exhibit No. 134, side folios 772 to 775)

	1936	1937
(1) Vehicular Units:		
Present Rates, 100%	1 468 052	1 720 78
Proposed Rates 108.87%	-	-
(2) Rate Base (Historical Cost):		
Average Capital	7 847 411	7 949 53
(3) Operating Revenues:		
Tolls @ \$0.61/07/Vehicle, after 1937	1 306 191	1 544 69
Rents and Miscellaneous	8 128	8 24
Total	1 314 319	1 552 93
(4) Direct Operating Expenses:		
Operation, Maintenance, etc.	140 575	135 08
Gross Revenue Tax (2%)	26 125	31 11
Total	166 700	166 19
(5) General Expenses	61 625	149 97
(6) Total Direct & General Expenses	228 325	316 16
(7) Amortization of Investment	206 809	206 72
(8) Total Expenses Plus Amortization	435 134	522 89
(9) Net Income Before Income Taxes	978 185	1 030 03
(10) Income Taxes:		
Federal Income Tax	13 689	66 22
State Franchise Tax	-	-
Total	13 689	66 22
(11) Total Exp. Incl. Amortiz. & Income Taxes	448 823	589 11
(12) Net Income After Income Taxes	865 496	963 81
(13) Return:		
(a) On Rate Base	10.89%	12.12
(b) In Excess of 8%	229 703	327 85
(c) Accumulated Excess Return	1 367 325*	1 039 47

o -- Composite ratio based on stimulation of 11% in "automobil"  
 \* -- Red Figure



# COMPANY EXHIBIT NO. 134

## ESTIMATED FUTURE TRAFFIC, RATE BASE, OPERATING REVENUES, EXPENSES & RETURN Under Rates Proposed By J. G. Hunter, 1938-1948 CARQUINEZ BRIDGE AMERICAN TOLL BRIDGE COMPANY

1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948
1 468 052	1 720 786	1 596 000	1 624 000	1 652 000	1 682 800	1 716 400	1 747 200	1 778 000	1 808 800	1 839 600	1 870 400	218 300
-	-	1 737 565	1 768 049	1 798 532	1 832 064	1 868 645	1 902 177	1 935 709	1 969 241	2 002 773	2 035 304	237 633
7 847 411	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537	7 949 537
1 306 191	1 544 691	1 060 836	1 078 634	1 097 230	1 117 687	1 140 004	1 160 461	1 180 918	1 201 375	1 221 832	1 242 288	144 991
8 128	8 242	8 243	8 243	8 243	8 243	8 243	8 243	8 243	8 243	8 243	8 243	1 375
1 314 319	1 522 934	1 068 279	1 086 877	1 105 473	1 125 930	1 148 247	1 168 704	1 189 161	1 209 618	1 230 075	1 250 531	146 366
140 575	135 084	146 700	146 700	146 700	146 700	146 700	138 300	138 300	138 300	138 300	138 300	9 850
26 125	31 114	21 201	21 573	21 945	22 354	22 800	23 209	23 618	24 028	24 437	24 846	2 900
166 700	166 198	167 901	158 273	168 645	169 054	169 500	161 509	161 918	162 328	162 737	163 146	12 750
61 625	149 970	63 852	63 991	64 365	64 734	64 575	62 186	62 254	62 389	62 761	62 829	25 363
228 325	316 168	231 753	232 264	233 010	233 488	234 075	223 695	224 172	224 717	225 198	225 975	38 113
206 809	206 727	206 727	206 727	206 727	206 727	206 727	206 727	206 727	206 727	206 727	206 727	34 454
435 134	522 895	438 480	438 991	439 737	440 215	440 802	430 422	430 899	431 444	432 225	432 702	72 567
978 185	1 030 039	629 799	647 886	665 736	685 715	707 445	738 282	758 262	778 174	797 850	817 829	73 799
13 689	66 223	108 511	45 073	40 779	50 427	54 899	61 509	73 340	80 596	92 902	97 130	115 615
-	-	24 726	9 236	9 821	11 858	13 402	15 951	18 594	20 780	23 065	24 501	26 120
13 689	66 223	133 237	54 309	50 600	62 285	68 301	77 460	91 934	101 376	115 967	121 631	141 735
448 823	589 118	571 717	493 300	490 337	502 500	509 103	507 882	522 833	532 820	548 192	554 333	214 302
865 196	963 816	496 562	993 577	615 136	623 430	639 144	660 822	666 388	676 798	681 883	696 198	67 936
10.89%	12.12%	6.25%	7.47%	7.71%	7.81%	8.01%	8.31%	8.38%	8.51%	8.58%	8.76%	3.46%
229 703	327 853	139 401*	42 386*	20 827*	12 533*	3 181	24 359	30 365	40 835	45 920	60 235	173 930*
1 367 325*	1 039 472*	1 178 873*	1 221 259*	1 242 086*	1 254 619*	1 251 438*	1 226 579*	1 196 214*	1 155 379*	1 109 459*	1 049 224*	1 223 154*

if 11% in "automobile" traffic.



**ESTIMATED FUTURE  
TRAFFIC, RATE BASE, OPERATING REVENUES, EXPENSES & RETURN  
Under Rates Proposed By J.G. Hunter, 1938-1948**

**ANTIOCH BRIDGE  
AMERICAN TOLL BRIDGE COMPANY**

	1936	1937	1938	1939	1940	1941	1942
(1) Vehicular Units:							
Present Rates 100.00%	146 865	143 110	150 000	150 000	150 000	150 000	150 000
Proposed Rates 108.87%			163 305	163 305	163 305	163 305	163 305
(2) Rate Base (Historical Cost):							
Average Capital	1 738 466	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358
(3) Operating Revenues:							
Tolls @ \$0.61007/Vehicle, after 1937	126 791	125 120	99 627	99 627	99 627	99 627	99 627
Rents and Miscellaneous	120	120	120	120	120	120	120
Total	126 911	125 240	99 747	99 747	99 747	99 747	99 747
(4) Direct Operating Expenses:							
Operation, Maintenance, etc.	33 897	36 827	43 185	43 185	43 185	43 185	39 385
Gross Revenue Tax (2%)	2 536	2 502	1 993	1 993	1 993	1 993	1 993
Total	36 433	39 329	45 178	45 178	45 178	45 178	41 378
(5) General Expenses	8 090	19 680	6 008	5 869	5 825	5 756	5 615
(6) Total Direct & General Expenses	44 523	59 009	51 186	51 047	51 003	50 934	46 993
(7) Amortization of Investment	38 160	38 160	38 160	38 160	38 160	38 160	38 160
(8) Total Expenses Plus Amortization	82 683	97 169	89 346	89 207	89 163	89 094	85 153
(9) Net Income Before Income Taxes	44 228	28 071	10 401	10 540	10 564	10 653	14 594
(10) Income Taxes:							
Federal Income Tax			16 338*	19 334*	16 666*	17 174*	14 650*
State Franchise Tax			2 351*	2 945*	3 082*	2 779*	2 482*
Total			18 689*	22 279*	19 748*	19 953*	17 132*
(11) Total Exp. Incl. Amortization & Income Taxes	82 683	97 169	70 657	66 928	69 415	69 141	68 021
(12) Net Income After Income Taxes	44 228	28 071	29 090	32 819	30 332	30 606	31 726
(13) Return:							
(a) On Rate Base	2.51%	1.61%	1.67%	1.89%	1.71%	1.76%	1.82%
(b) In Excess of 8%	94 849*	111 078*	110 059*	106 330*	108 817*	108 543*	107 423*
(c) Accumulated Excess Return	1 504 988*	1 616 066*	1 726 125*	1 832 455*	1 941 272*	2 049 815*	2 157 238*

o -- Composite ratio based on stimulation of 11% in "automobile" traffic.

\* -- Red Figure

# REVENUES, EXPENSES & RETURN for, 1938-1948

COMPANY

	1941	1942	1943	1944	1945	1946	1947	1948 (To July 5)
00	150 000	150 000	150 000	150 000	150 000	150 000	150 000	75 000
05	163 305	163 305	163 305	163 305	163 305	163 305	163 305	81 652
58	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358	1 739 358
27	99 627	99 627	99 627	99 627	99 627	99 627	99 627	49 813
20	120	120	120	120	120	120	120	60
47	99 747	99 747	99 747	99 747	99 747	99 747	99 747	49 873
95	43 185	39 385	35 385	35 385	35 385	35 385	35 385	10 117
23	1 993	1 993	1 993	1 993	1 993	1 993	1 993	996
78	45 178	41 378	37 378	37 378	37 378	37 378	37 378	11 113
25	5 756	5 615	5 324	5 266	5 131	5 089	5 021	8 682
03	50 934	46 993	42 712	42 644	42 509	42 467	42 379	19 795
60	38 160	38 160	38 160	38 160	38 160	38 160	38 160	19 090
53	89 094	85 153	80 872	80 804	80 669	80 627	80 599	38 885
44	10 653	14 594	18 875	18 943	19 078	19 120	19 182	10 988
66*	17 174*	14 650*	10 652*	8 744*	6 056*	3 569*	1 199*	4 546*
32*	2 779*	2 482*	2 080*	1 992*	1 293*	957*	808*	1 061*
18*	19 953*	17 132*	12 732*	10 336*	7 319*	4 526*	2 007*	5 607*
15	69 141	68 021	68 140	70 468	73 320	76 101	78 552	33 278
32	30 606	31 726	31 607	29 279	26 427	23 646	21 195	16 995
6	1.76%	1.82%	1.82%	1.68%	1.52%	1.40%	1.22%	1.91%
17*	108 543*	107 423*	107 542*	109 870*	112 722*	115 503*	117 954*	52 979*
72*	2 049.815*	2 157 238*	2 264 780*	2 374 650*	2 487 372*	2 602 875*	2 720 829*	2 773 808*

**ESTIMATED FUTURE  
TRAFFIC, RATE BASE, OPERATING REVENUES, EXPENSES & RETURN**  
Under Rates Proposed By J. G. Hunter, 1938-1948  
Carquinez Bridge and Antioch Bridge  
AMERICAN TOLL BRIDGE COMPANY

	1936	1937	1938	1939	1940	1941	1942
(1) Vehicular Units: Present Rates 100.00% Proposed Rates 108.87%	\$1 614 917	1 863 878	1 746 000	1 774 000	1 802 000	1 832 800	1 866
(2) Rate Base (Historical Cost): Average Capital	9 685 877	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688
(3) Operating Revenues: Tolls @ \$0.61007/Vehicle, after 1937 Rents and Miscellaneous Total	1 432 982 8 248 1 441 230	1 669 811 8 363 1 678 174	1 159 663 8 363 1 168 023	1 178 261 8 363 1 186 624	1 196 857 8 363 1 205 220	1 217 314 8 363 1 225 677	1 239 8 1 247
(4) Direct Operating Expenses: Operation, Maintenance, Etc. Gross Revenue Tax (2%) Total	174 472 28 661 203 133	171 911 33 616 205 527	189 885 23 194 213 079	189 885 23 566 213 451	189 885 23 938 213 823	189 885 24 347 214 232	186 24 210
(5) General Expenses	69 715	169 650	69 860	69 860	70 190	70 190	70
(6) Total Direct & General Expenses	272 848	375 177	282 939	283 311	284 013	284 422	281
(7) Amortization of Investment	244 969	244 887	244 887	244 887	244 887	244 887	244
(8) Total Expenses Plus Amortization	517 817	620 064	527 826	528 198	528 900	529 309	525
(9) Net Income Before Income Taxes	923 413	1 058 110	640 200	658 426	676 320	696 368	722
(10) Income Taxes: Federal Income Tax State Franchise Tax Total	13 609 66 223 13 689	66 223 22 375 66 223	92 173 22 375 114 548	25 739 6 291 32 030	24 113 6 739 30 852	33 253 9 079 42 332	40 10 51
(11) Total Exp. Incl. Amortization & Income Taxes	531 506	686 287	642 374	560 228	599 752	571 641	577
(12) Net Income After Income Taxes	909 724	991 887	525 652	626 396	645 468	654 036	670
(13) Return: (a) On Rate Base (b) In Excess of 8% (c) Accumulated Excess Return	9.39% 134 854 2 872 313*	10.21% 216 775 2 655 538*	5.43% 249 460* 2 904 998*	6.46% 148 716* 3 053 714*	6.66% 129 644* 3 183 358*	6.75% 121 076* 3 304 434*	6 104 3 408

o -- Composite ratio based on stimulation of 11% in "automobile" traffic.

\* -- Rod Figure



ES, EXPENSES & RETURN  
 ter, 1938-1948  
 n Bridge  
 COMPANY

	1941	1942	1943	1944	1945	1946	1947	1948
0	1 832 800	1 866 400	1 897 200	1 928 000	1 958 800	1 989 600	2 020 400	293 300
7	1 995 369	2 031 950	2 065 482	2 099 014	2 132 546	2 166 078	2 199 609	319 315
5	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895	9 688 895
7	1 217 314	1 239 631	1 260 088	1 280 545	1 301 002	1 321 459	1 341 915	194 804
3	8 363	8 363	8 363	8 363	8 363	8 363	8 363	1 435
0	1 225 677	1 247 994	1 268 451	1 288 908	1 309 365	1 329 822	1 350 278	196 239
5	189 885	186 085	173 685	173 685	173 685	173 685	173 685	19 967
8	24 347	24 793	25 202	25 611	26 021	26 430	26 839	3 896
3	214 232	210 878	198 887	199 296	199 706	200 115	200 524	23 863
0	70 190	70 190	67 520	67 520	67 520	67 850	67 850	34 045
5	284 122	281 088	266 407	266 816	267 226	267 905	268 374	57 908
7	244 887	244 887	244 887	244 887	244 887	244 887	244 887	53 544
0	529 309	525 955	511 294	511 703	512 113	512 852	513 261	111 452
0	696 368	722 039	757 157	777 205	797 252	816 970	837 017	34 787
8	33 253	40 249	50 857	64 596	74 540	89 333	95 931	111 069
9	9 079	10 920	13 871	17 002	19 487	22 108	23 693	25 059
2	42 332	51 169	64 728	81 578	94 027	111 441	119 624	136 128
3	571 613	577 124	576 022	593 301	606 140	624 293	632 085	247 580
0	654 036	670 370	692 429	695 607	703 225	705 529	717 393	51 341*
	6.75%	6.92%	7.15%	7.18%	7.26%	7.28%	7.40%	2.34%
*	121 076*	104 242*	82 603*	79 505*	71 887*	69 583*	57 719*	226 909*
* 3	304 434*	408 676*	491 359*	570 864*	642 751*	712 334*	770 053*	996 962*

# ANALYSIS ON

## TRAFFIC AND REVENUE 1936 AND 1937 - CARQUINEZ BRIDGE

### PRESENT RATES AND RATES PROPOSED BY J. G. HUNTER

EXISTING TRAFFIC 1936			EXISTING TRAFFIC 1937		
TOLL RATE	UNITS	REVENUE	TOLL RATE	UNITS	REVENUE

#### VEHICLES & FREIGHT:

Automobiles					
Cash	\$ .60	1 160 165	\$ .60	1 409 095	845 457 80
Commute		79 666 18 521 60	Commute	87 240	22 733 00
W.P.A. Employees	.075	44 120 3 309 00	.075	13 600	1 020 00
Total		1 283 951 717 929 60		1 509 935	869 210 00
TRUCKS (Revenue includes "freight")	1.625	132 531 215 309 02	1.65	138 690	228 764 75
STAGES (Rate \$.50)	.515	33 077 17 024 05	.50	42 022	21 011 00
MISCELLANEOUS VEHICLES	.535	18 493 9 885 06	.68	22 780	15 469 91
Subtotal		184 101 242 218 13		203 492	265 245 66
TOTAL FOR VEHICLES & FREIGHT		1 468 052 960 147 73		1 713 427 41	1 344 55 66

#### PASSENGERS & PEDESTRIANS:

Auto, Stage, Truck Passengers)					
Pedestrians	.10	2 754 077 275 407 72	.10	3 307 939	330 793 70
Stages Charge	(.075	474 078 35 555 85	.075	575 550	43 166 25
	(.10	16 885 1 688 50	.10	23 494	2 349 40
Trucks Charge	.10	56 795 5 679 05	.10	68 536	6 853 60
Commute	Commute	796 160 27 711 71	Commute	491 640	18 537 50
TOTAL FOR PASSENGERS & PEDESTRIANS		4 097 995 346 043 28		4 467 157	\$ 401 700 45

#### GRAND TOTAL TRAFFIC

#### AVERAGE REVENUE PER VEHICLE

\$1 306 191 01

\$0.88974

\$1 536 156 11

\$0.89654

\* -- 1 per 20 Autos

### EFFECT OF PROPOSED RATES ON EXISTING TRAFFIC YEAR 1936

STIMU- LATION	UNITS	RATE	REVENUE
------------------	-------	------	---------

#### VEHICLES & FREIGHT:

Automobiles				
Cash	11%	1 287 683	\$ .50	643 891 50
Commute	-	79 666	Commute	18 521 60
W.P.A. Employees	-	44 120	.075	3 309 00
Total		1 411 569		665 722 10
TRUCKS	-	132 531	1.625	215 309 02
STAGES	-	33 077	.515	17 024 05
MISCELLANEOUS VEHICLES	-	18 493	.535	9 885 06
Subtotal		184 101		242 218 13
TOTAL FOR VEHICLES & FREIGHT		1 595 670		\$ 907 940 23

Ratio: Traffic @ Proposed Rates  
Traffic @ Existing Rates 108.69%

#### PASSENGERS & PEDESTRIANS:

Auto Passengers @ 2.2 per auto	(	2 494 355		
	(	58 008*	.05	2 900 40
Stg. Trk Passrs. & Pedestrians		201 714	.05	10 085 70
Stage Charge	(	474 078	.05	23 703 90
	(	16 885	.05	844 25
Trucks Charge	-	56 795	.05	2 839 75
Commute	-	796 160	Commute	27 711 71
		4 097 995		\$ 68 085 71

#### GRAND TOTAL TRAFFIC

#### AVERAGE REVENUE PER VEHICLE

\$ 976 025 94 \$33

\$0.61167 \$



# 37 - CARQUINEZ BRIDGE

POSED BY J. G. HUNTER

EFFECT OF PROPOSED RATES ON EXISTING TRAFFIC YEAR 1936			DECREASE UNDER PROPOSED RATES YEAR 1936	EFFECT OF PROPOSED RATES ON EXISTING TRAFFIC YEAR 1937			DECREASE UNDER PROPOSED RATES YEAR 1937	ADOPTED FIGURES
UNITS	RATE	REVENUE		STIMU- LATION	UNITS	RATE	REVENUE	
1 287 683	\$ .50	643 891 50		11%	1 564 095	\$ .50	782 047 50	
79 666 Commute		18 521 60		-	87 240 Commute		22 733 00	
44 120	.075	3 309 00		-	13 600	.075	1 020 00	
1 411 569		665 722 10			1 664 935		805 800 50	
132 531	1.625	215 309 02		-	138 690	1.65	228 764 75	
33 077	.515	17 024 05		-	42 022	.50	21 011 00	
18 193	.535	9 885 06		-	22 780	.68	15 469 91	
184 101		242 218 13			203 492		265 245 66	
1 995 670		\$ 907 940 23			1 868 427		\$1 071 046 16	
108.69%				109.05%	108.87%			
2 494 355		\$			3 029 554	-	\$	
58 008*	.05	2 900 40			70 455*	.05	3 522 75	
201 714	.05	10 085 70			207 928	.05	10 396 40	
474 078	.05	23 703 90			575 550	.05	28 777 50	
16 885	.05	844 25			23 494	.05	1 174 70	
56 795	.05	2 839 75			68 536	.05	3 426 80	
796 160 Commute		27 711 71			491 640 Commute		18 537 50	
4 097 995		\$ 68 085 71			4 467 157		\$ 65 835 65	
\$ 976 025 94 \$330 165 07					\$1 136 881 81 \$399 274 30			
\$0.167 \$ 0.27807					\$ 0.608 47 \$ 0.288 07 \$0.6107			



[fol. 776] Mr. Thelen: Proceed, Mr. Ready.

A. On the lefthand portion of this first table you will find the same data as to total revenue as shown on page 6 of Mr. Hunter's Exhibit No. 23. I think about the only difference is a difference of 1000 vehicles under the item of 1936 where he shows 1,467,052 and we show 1,468,052. Our figure, I think, is the correct figure. It is a matter of addition based upon Mr. Dunford's figures. I think that is just a typographical error.

On the righthand side we have set up the number of vehicles and revenue on the basis of 11 per cent stimulation in travel for the year 1936 and the year 1937 to compute the revenue that would have resulted had the rates been reduced by the amount suggested by Mr. Hunter at the beginning of 1936 or beginning of 1937, or sufficient prior thereto to have gotten the full 11 per cent stimulation of traffic. The number of vehicles listed as cash automobiles have been increased by 11 per cent and the price of 50 cents per vehicle applied. The other revenue from automobiles has been assumed to remain the same, that is, the commute rates to the WPA employes. Trucks have been continued at the same rate as before, as there were no suggestions as to reductions on trucks. The same thing applies to stages and to miscellaneous vehicles. Now, the average effect of the 11 per cent stimulation on automobiles would be to increase the total number of vehicles by 8.69 per cent, based on 1936, and 9.05 per cent in 1937, or an average of the two of 8.87 per cent increase. That is due to the fact that the 11 per cent increase is applied to the automobiles and the percentage just read applies to the total vehicles, including trucks, busses and miscellaneous vehicles.

[fol. 777] In the item of passenger and pedestrian revenue, as I stated in the previous exhibit, we obtained the experience of one additional or extra passenger to each 20 vehicles, so in this set-up we have included that amount at 5 cents per passenger and it accounts for the figure of \$2,090.40 under 1936—no, I mean \$2,900.40—and \$3,522.75 in 1937. The balance of the passengers and pedestrians and employes on stages and trucks have been computed at 5 cents as noted and the commute rates left the same as before. That gives this result, that the net effect of the reduction in rates in the gross revenue of the Company would be a reduction of \$330,165.07 on the 1936 basis, and for 1937, \$399,274.30. That is to be compared with Mr. Hunter's estimate for

1937 of \$385,183.05, or approximately \$14,000 greater. His 1936 estimate I will have in a minute. His estimate for 1936 was \$318,563.45, shown on page 12 of Exhibit 19, compared with \$330,165.07.

[fol. 778] Mr. Thelen: As I understand it, Mr. Ready, we are now in this position, that in Exhibit No. 11 gross revenues, operating expenses, depreciation annuity, and so forth, together with net for return, on the assumption that the existing tolls continued throughout the remainder of the franchise life; then turning to the exhibit which you have just been dealing with, Exhibit 134, you have made a similar computation, with one important change, however, namely, that the reduction in passenger automobile rates suggested by Mr. Hunter be made effective.

A. Would be made effective, not the suggestion that they be, but that they would be made effective.

Q. Very well, Having those two exhibits before you, have you prepared a final or closing exhibit which summarizes the principal figures shown in the two exhibits to which I have just referred?

A. I have.

Mr. Thelen: We will now ask, if the Commission please, that the exhibit consisting of three sheets, which exhibit does not have a title page, be introduced and marked Exhibit 135, I think it is.

Commissioner Riley: That is correct, yes; Exhibit 135, so noted.

Mr. Thelen: In order that the record may be clear as to these sheets, the first sheet is headed "Summary of earnings, Carquinez Bridge", with two subdivisions, one being based on continuation of present rates and the other being based on tolls proposed by J. G. Hunter; the second sheet being the same except that it refers to the Antioch Bridge, [fol. 779] and the third being a consolidation of the Antioch and the Carquinez Bridges.

Commissioner Riley: It will be so received and marked Exhibit 135.

COMPANY CHARTER, 1925  
Summary of Earnings  
Carquinez Bridge  
American Toll Bridge Company

Table No. 1

Year	Based on Continuation of Present Rates Net for Return				Based on Tolls Proposed by J. G. Hunter (Exh. 10) Net for Return			
	Average Capital 1	Gross Revenue 2	Amount 3	% on Capital 4	For Year Accumulated 5	Gross Revenue 7	Amount 8	% on Capital 9
1926	7,106,337	\$3,388	\$3,388	8.62	\$3,388	\$1,314,319	\$945,496	10.89
1927	7,365,207	639,895	357,528	8.62	57,008*	1,552,934	963,816	12.12
1928	7,544,361	986,807	509,774	6.82	233,765*	1,068,279	486,562	6.26
1929	7,777,981	1,065,259	618,510	8.20	135,926*	1,086,877	593,577	7.47
1930	7,946,753	1,203,322	739,045	9.50	38,753*	1,105,473	615,136	7.74
1931	7,946,753	1,158,517	650,376	8.18	144,299	1,125,930	623,430	7.84
1932	7,954,819	983,120	511,047	6.42	284,435*	1,148,247	639,144	8.04
1933	7,950,905	924,351	465,892	5.82	329,206*	1,169,161	666,328	8.31
1934	7,946,464	966,258	543,462	6.84	261,184*	1,169,161	666,328	8.31
1935	7,946,068	1,068,609	589,299	7.42	125,847*	1,169,161	666,328	8.31
1936	7,947,411	1,314,319	885,496	10.89	1,597,028*	1,169,161	666,328	8.31
1937	7,949,537	1,552,934	903,816	12.12	1,039,472*	1,169,161	666,328	8.31
1938	7,949,537	1,440,653	861,489	10.84	225,526	1,169,161	666,328	8.31
1939	7,949,537	1,465,783	893,068	11.23	257,103	1,169,161	666,328	8.31
1940	7,949,537	1,490,913	917,776	11.55	281,813	1,169,161	666,328	8.31
1941	7,949,537	1,518,556	927,329	11.67	291,866	1,169,161	666,328	8.31
1942	7,949,537	1,548,712	946,800	11.91	310,837	1,169,161	666,328	8.31
1943	7,949,537	1,476,355	961,171	12.09	325,208	1,169,161	666,328	8.31
1944	7,949,537	1,603,998	965,884	12.15	329,921	1,169,161	666,328	8.31
1945	7,949,537	1,631,641	978,161	12.29	340,198	1,169,161	666,328	8.31
1946	7,949,537	1,659,284	978,067	12.30	342,104	1,169,161	666,328	8.31
1947	7,949,537	1,686,927	991,278	12.47	355,315	1,169,161	666,328	8.31
1948	7,949,537	1,717,375	1,014,774*	11.00*	251,768*	1,169,161	666,328	8.31
Average 1927-1928	7,858,224	1,335,281	775,127	9.85	85,212	1,138,127	630,967	8.02
1928								

†-10% Through 1934, 9% in 1935, 8% in 1936-1948

\*-Red Figure



## Summary of Earnings

### Carquinez Bridge

American Toll Bridge Company

Table No. 2

## Antioch Bridge

[illegible]



[fol. 783] Commissioner Riley: Do you wish to cross-examine Mr. Ready on any matters testified to, Mr. Rowell?

Mr. Rowell: No, Mr. Commissioner, I just have one question. Have you made any study, Mr. Ready, as to the possible increase in truck traffic in the event of a change in rates, lowering of rates?

A. I have not.

---

J. WILBUR HAINES, recalled.

Direct examination resumed:

Mr. Thelen: You will remember, Mr. Haines, at the time you were on the stand before some interest was evidenced in the question of the Federal taxes as shown by you on your Exhibit No. 126?

A. Yes, sir.

Q. State, please, whether or not at my request you have prepared a supplement report which shows in considerable detail the exact computations which you used in computing the various classes of Federal taxes?

A. Yes, we have prepared a supplement to Exhibit 126, another report containing two exhibits which we have called Exhibits A and B, the first of those being a statement of estimated taxable revenues and deductions therefrom, and Federal taxes based thereon, by years, for the period January 1, 1938, to June 30, 1948; and the second one being actual computations of estimated Federal taxes based on the estimated revenues and deductions set forth in Exhibit A for the same period.

Mr. Thelen: If the Commissioner pleases, we ask that the report to which reference has just been made be introduced and marked Exhibit 136.

Commissioner Riley: It will be received as Exhibit 136 and so noted, by the respondent.

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[fol. 784] CHARLES DERLETH, JR., recalled.

Cross-examination:

Mr. Rowell: Professor Derleth, you have in your previous testimony explained rather fully and very interestingly

the curve of construction, particularly during the period up to January, 1925, during the period when Duncanson & Harrellson were doing most of the work. I would like to confine my questions now, Mr. Derleth, to the period subsequent to January, 1925. I think you stated that the Raymond Concrete Pile Company took over the work on February 1, 1925, under which you termed the "interim" agreement. Now, there was placed in evidence an exhibit, Exhibit 124, which purports to be an agreement dated January 24, 1925, made between the American Toll Bridge Company and the Raymond Concrete Pile Company. I wish to ask you if that is the only agreement which you had with the Raymond Concrete Pile Company?

A. I told you last December that those agreements were not directly my concern, but that I was conscious and knew that they existed and I acted, as the chief engineer, from February 1, 1925, to April, 1925, in accordance with the interim understanding. Whether there were any other agreements between the American Toll Bridge Company and its president, Mr. Hanford, and the Raymond Concrete Pile Company, is not known to me.

Q. What I wish to know is this: What were the circumstances and when did the Missouri Valley Bridge Company take over the work which, as I understood you to say was about February 1, 1925?

A. The Missouri Valley Bridge & Iron Company, as an intended sub-contractor throughout the completion of the [fol. 785] bridge, actually started the field work and related work February 1, 1925.

Q. Was that under a new contract made with the Missouri Valley Company?

A. Not at that time. And during February and March and into April 10th, I think, 1925, the Missouri Valley Bridge & Iron Company was a sub-contractor of the Raymond Concrete Pile Company, and we were dealing with the Raymond Company. However, on April 10, 1925, the Raymond Company decided to quit. The Missouri Valley Bridge & Iron Company continued without interruption and eventually entered into a contract of its own to complete the foundations, and similarly the American Bridge Company acted in the same way.

Q. Then there was reference made to a payment of approximately \$110,000 to the Raymond Concrete Pile Com-

pany, of which I believe about \$51,000 or \$61,000 went to the Missouri Valley Bridge & Iron Company; is that correct?

A. That is correct. I believe I fully stated in December that the total sum paid was about \$110,000, of which \$50,000 was to the Raymond Company. The rest of the money, about \$61,000, as you say, or a little more, was for construction actually made between February 1, 1925, and into April. And of that sum, only \$1200 went, as I remember, to the Raymond Company; the rest of the sum, something over \$60,000, was paid to the Missouri Valley Bridge & Iron Company for the actual work which they did on the various piers—Piers 2 and 3, 4 and 6, 7 and 8.

Q. Then it was in a measure on a cost-plus basis until the time that the Missouri Valley Bridge & Iron Company entered into firm contracts?

[fol. 786] A. That is correct; it was in accordance with the rates that had been agreed upon for the interim agreement.

Q. I wish to show you a copy of a letter purportedly signed by you and addressed to the American Toll Bridge Company, dated April 20, 1925, and ask if you recognise that communication (handing to witness)?

A. Yes, that is my signature.

Mr. Rowell: I will ask that that be introduced in evidence as the next exhibit in order.

Commissioner Riley: It will be received as Exhibit 13, by the State.

(Here follows one photolithograph, side folio 787)



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COMMISSION EXHIBIT 137.  
EXHIBIT XIII

CHARLES DERLETH, JR.

CIVIL AND CONSULTING  
ENGINEER

BERKELEY, CALIFORNIA

April 20, 1925

ADDRESS REPLY TO

University of California

American Toll Bridge Co.

525 Market St.

San Francisco

Gentlemen:

I do hereby certify that the estimated cost to the American Toll Bridge Co. for the construction of the Carquinez Highway Bridge and its roadway approaches, complete, in accordance with the plans and specifications, the bids that have been received and accepted from the Missouri Valley Bridge & Iron Co. and the United States Steel Products Co., and with moneys previously and already expended is \$5,390,795.; which cost is segregated as follows:-

Item	Amount expended by American Toll Bridge Co. to Jan. 31, 1925	Costs to Complete Including bids recd.	Total Cost
1. Diamond drill borings	\$42,261.	--	\$42,261.
2. Excavation at Pier 1	11,418.	--	11,418.
3. Engineering	126,534.	\$173,466.	300,000.
4. Piers 1-5 to 12 inclusive	68,934.	29,700.*	98,634.
5. Pier 4	177,091.	83,000.*	260,091.
6. Piers 2 and 3	269,028.	1,307,000.*	1,576,028.
7. Steel superstructure complete	--	2,687,000.*	2,687,000.
8. Bridge floor and sidewalks	--	150,000.	150,000.
9. Trestle offices, scales, etc.	--	35,000.	35,000.
10. Construction of wharf, additions and materials in stores	89,863.	--	89,863.
Totals	\$785,129.	\$4,465,166.	\$5,250,295.
11. South Approach			8,500.
12. North Approach			32,000.
13. Contingencies			100,000.
Total			\$5,390,795.

The above total is the structural cost, not including the value of lands, rights of way, and the considerable expenses incurred in obtaining franchise and War Department permit; nor does the estimate include a going-concern value when the bridge is completed and ready for traffic. In my judgment the value of the bridge when completed is not less than \$6,000,000.

These items are bids received and accepted from the Missouri Valley Bridge & Iron Co. and the United States Steel Products Company.

Signed C. Derleth, Jr.

*C. Derleth, Jr.*

Chief Engineer, Carquinez Highway Bridge



[fol. 788] - Mr. Rowell: I note, Professor Derleth, that at the bottom you refer to certain starred items as bids received and accepted from the Missouri Valley Bridge & Iron Company and the United States Steel Products Company, those being in reference to Piers 1 to 5 and 12, inclusive, Piers 4 and Piers 2 and 3 and the superstructure. Now, was there a firm contract made with the Missouri Valley Bridge & Iron Company at that time?

A. Yes, there was a contract made with the Missouri Valley Bridge & Iron Company to complete all sub-structural work, which contract I think was finally signed by the president, Mr. Tulloch, at a later date because of the ironing out of certain details.

Q. On the piers alone there you have a total of about \$2,246,171. Now, would that have been the sum actually paid to the Missouri Valley Bridge & Iron Company for the completion of the work on the piers?

A. No, because the agreement of the Missouri Valley Bridge & Iron Company was to do certain definite completing work; but I believe in December I mentioned that there was certain interregnum construction, particularly on Pier 4, which the Missouri Valley Bridge & Iron Company expected to do on a cost-plus.

Q. Isn't that a part of the work done for which they were paid in the making of that payment of \$110,000?

A. No, because this work to which I refer, particularly for Pier 4 and which was done after April, 1925, concerned the driving of the sheet piling around Pier 4, the placing of riprap and the preparation of the surface of the seal for the additional higher portions of the pier. And that work was an extra. And if my glance at this letter of April 20, [fol. 789] 1925, is correct, that sum is not here included.

Q. This would indicate that their estimate for the completion of Pier 4 was only \$83,000?

A. For the portion above the seal, but not including the preparation of the surface of the seal, the placing of riprap around the pier and the driving of these sheet pile enclosures which consisted of sheet piles some 70 feet long and which was an entirely additional item and paid for on a cost-plus basis by the American Toll Bridge Company to the Missouri Valley Bridge & Iron Company in the period of about May 1, 1925, to some date in the beginning of 1926.

Q. The reason I am interested, Professor Derleth, is because the books of the Company seem to indicate that the

total sum paid the Missouri Valley Bridge & Iron Company was \$1,417,660.15, which is substantially the amount, or a little less than the amount, which appears to be reflected by your figures as shown in this letter.

A. I would have to examine the records of which you speak to comment at all on your last statement. I am speaking from memory, and my memory is very clear on what actually did happen. The Missouri Valley Bridge & Iron Company did certain work following February 1, 1925, in the interim agreement, for which they were paid about \$60,000. Then they entered a definite contract with the American Toll Bridge Company to complete all of the piers and, as I have said several times, in addition to that they did this special work on Pier 4.

Mr. Rowell: That is all, Professor.

Redirect examination:

Mr. Thelen: Mr. Derleth, I should like to ask you a few [fol. 790] questions in connection with Exhibit 137, which is a letter from yourself to the American Toll Bridge Company. You have a copy of that letter before you?

A. Yes, sir.

Q. Have you had an opportunity to read it this morning?

A. No, I have just glanced — it and I recognize that I wrote it.

Q. Will you kindly read it to yourself and then I wish to ask you a few questions concerning it?

A. Yes, sir.

Q. You show there, Mr. Derleth, certain items which total \$5,390,795.

A. Yes, sir.

Q. Then, as I understand it, the next paragraph starts this way, "The above total is the structural cost, not including value of lands, rights of way and certain other items". And if I may pause there, referring to the subject of the structural cost, you show in your letter itself, do you not, that even that figure is not the complete structural cost because it does not include the value of lands and rights of way?

A. Well, there are some other things it does not include and there are reasons why they were not included at this time.



Q. I am going to ask you a few questions and then I wish you, out of the fullness of your knowledge, would add matters that do not occur to me. So far as structural cost is concerned, you show on the face of the letter that that does not include items of structural cost such as items of land and rights of way.

A. That is correct; but there are some other things here not mentioned, and there was a reason for it.

Q. Well, do those items include anything for cost of [fol. 791] fender?

A. Nothing at all; the fender cost some \$625,000 in addition.

Q. That is also structural cost, is it not?

A. The costs that I have just this morning been discussing with Attorney Rowell are not here, namely, that uncertain cost at this time, which was to be done on a cost-plus basis, and in accordance with my orders which Mr. Hanford hoped would not have to happen, and it amounted to another \$100,000.

Q. Now, may I go a step further—

A. When people write letters at an early date like this there are sometimes reasons why they do not include all items.

Q. Well, if you will just finish what you have in mind I will be glad to have you do that, and then if there is anything left I will be glad to make inquiry concerning it. Will you add whatever you have in mind?

A. As I say, this cost does not include those special constructions around Pier 4; it does not include the \$625,000 and more which we eventually spent on the fender, ending about February, 1931; it does not include the additional expenses of running a fine engineering establishment to December, 1930; it does not include the costs and improvements to certain lands and rights of way, etc.

Q. Now, may I develop these "etcet-ra" just a little? Does that item of \$5,390,796, or does the item of \$6,000,000 shown at the end of the next paragraph, include anything for interest during construction?

A. No, it does not; it was not necessary for me to say anything about that.

Q. Are you familiar with what was shown on the books of the Company with reference to such overhead items as [fol. 792] interest during construction?

A. No, I didn't wish to be concerned with those items; I had nothing to do with the navigation companies, and so forth.

Q. Did these figures, either the \$5,390,000 or the figure of \$6,000,000 later shown, include other overhead items such as general expense carried on the general books of the Company?

A. No, those were matters outside of my purview. In fact, I didn't want to have anything to do with them, I had plenty to do as chief engineer. This is a statement to Mr. Hanford as to about how much he had to raise at that time to complete his bridge, ready to open it to traffic, and it did not include the fender, and he knew it.

Q. I imagine it did not include other overhead, such as engineers include as preliminary expenses?

A. No.

Q. Did it include the overheads for engineering, even?

A. No, I have already said it did not include a lot of additional engineering which is not here contemplated, because this was written with the idea of what he would have to pay in order to get his bridge open and begin to get some tolls.

Q. May I ask whether that figure of \$6,000,000—pardon me, strike that. I want to refer to the last sentence of that paragraph, "In my judgment, the value of the bridge, when completed, is not less than \$6,000,000," and I want to ask you whether, in using that figure of \$6,000,000 you had in mind the item to which you referred in the earlier part of the paragraph, which is structural cost, or whether you intended to include all the overheads?

A. No, this is structural cost less such things as—this is construction cost, not including a fender and certain other items that I have already stated.

[fol. 793] Mr. Thelen: I think that is all.

Mr. Rowell: I think, Mr. Thelen, I should beg your pardon for leaving any intimation that this was introduced for the purpose of indicating that the total construction cost, as estimated here by Mr. Derleth, was there shown. It was for the purpose merely of trying to find out how much was actually paid under the contract of the Missouri Valley Bridge & Iron Company.

Mr. Thelen: Well, thank you for that. Of course, I could not know what was in counsel's able head and I was somewhat apprehensive lest that figure of \$6,000,000 be used for

something for which there was absolutely no justification, and that is the reason I wanted to have the record clear.

The Witness: May I make one closing sentence.

Mr. Rowell: Certainly.

A. I believe I told you when you asked me a few questions last December that Mr. Hanford in that period used to ask me almost every month to write a letter of this kind, and later similar letters, so that he might use them with his bond houses. And I think it perfectly sane and right for me to tell you that there were certain things omitted there. Nobody knew what the fender would cost, and we were considering what he had to do to get the bridge open to traffic, and he knew the navigation companies and the Sugar Company were going to try to prevent him from opening it, and so on and so forth. He knew he had to build a fender. At that very time that I wrote this letter the navigation companies, under the leadership of the Matson Company, wanted us to build a fender which would have cost \$1,100,000, and the records of the War Department hearings will [fol. 794] show that my statement is correct. Building a bridge is like a poem, it grows as you read it.

Mr. Rowell: Thank you very much.

Commissioner Riley: We will have a short recess. (Recess) Proceed, Mr. Rowell.

Mr. Rowell: I have some questions of Mr. Ready, Mr. Commissioner, and I think we will have no questions of any other witness.

LESTER S. READY, recalled.

Cross-examination:

Mr. Rowell: First, Mr. Ready, going back to your value exhibit, 117, page 26—do you have that before you?

A. Yes.

Q. Now, getting down to your items below, engineering overheads, for engineering I understand that you allowed  $3\frac{1}{2}$  per cent, is that correct?

A. No, engineering and inspection, the actual, that is approximately 6.03 per cent; that is, that which was charged exclusive of the \$24,307, which was strictly construction expense.

Q. Item 8, then, was the actual book charge?

A. Yes.

Q. And your overheads, 5 per cent, did you make any breakdown of that?

A. No, I did not. It is a judgment conclusion, as I think I stated, or should state. If it was a normal condition as of the present time, 4 per cent, I believe, would be adequate for the item of general expense, but in view of the problems and difficulties that this Company had at the time, the promotion of a bridge or the organization of a bridge and carrying it on to completion under the conditions and the ob-[fol. 795] stacles presented, 5 per cent was, in my judgment, fair. I didn't break it down at all.

Q. Did you analyze the reported general construction overheads?

A. Not in determining this figure.

Q. Didn't give it any consideration?

A. Well, I could not justify it in my mind as a reasonable figure.

Q. Is the same to be said about your next item of preliminary expense, organization, 3½ per cent?

A. Yes.

Q. You have not broken that down?

A. No; that is, I didn't attempt to build up an organization and determine the salaries of the different individuals or how much money they had to pay to individual concerns. But as I stated, were it a normal condition of the present time where bridges had been built and this difficulty of promotion and construction obstacles did not exist to the extent they did, that the 2½ per cent would have been reasonable, but that in view of all the facts on a historical basis, 3½ per cent was a fair figure for this item.

Q. And you gave no consideration to the actual book expenses?

A. I didn't attempt to try to decide what items were reasonable and what were not. What I was trying to do was answer this question: If I were making a historical appraisal of this property, what overheads would I have allowed as reasonable, in that case not knowing exactly what they had actually spent, even.

Q. Turning next to your Exhibit 119, interest during construction, the first page shows interest during construction of 9.6 per cent as indicated on the Company's books. Now, I take it that that is merely actual amounts

charged for interest and amortization applied to the base [fol. 796] capital figure there shown?

A. Yes, the 9.6 is the result of dividing one item by the other. The Company, as I think I explained, included under "Interest during construction" interest they paid on moneys they had borrowed under the bond issue only, and then included amortization of bond discount and expense for the period under construction or during construction, and that totaled this \$688,093. That is not a correct method of determining interest during construction for a construction job.

Q. You are not implying that the Company actually incurred more than \$688,093 for interest during construction?

A. Oh, yes; I think if you mean by "incurred" that they didn't pay somebody else that money, I would say you are probably right. But the man who advanced the money, put up the stock money, was entitled to the cost of money during the time it was out, and in that sense he incurred that because he could have invested it some place else but he put it into this job. He started in, as a matter of fact, in 1925 and, as I show in this curve, there was \$1,300,000 odd put into this property prior to the time that any bonds were issued. Now, under a sound valuation basis or sound cost basis he is entitled to some interest rate under interest during construction, the same interest rate as the money that was borrowed. There is not any question about that on a sound valuation basis. For accounting purposes the same thing, we have the right to capitalize that interest during construction.

Q. Whether the cost was incurred or not?

A. Yes. Suppose it was all by stock, suppose all the [fol. 797] money was invested through stock, common stock; they are still entitled to capitalize interest during construction of the job.

Commissioner Riley: It would be still proper to capitalize it at 9 per cent when the going rate for money was substantially less?

A. Yes; but the going rate for this project was 9 per cent, not 7 per cent. If it had been the Pacific Gas and Electric Company at that time, the going rate was probably  $6\frac{1}{2}$  or 7 per cent for bonds or preferred stock, but in this type of enterprise the cost of money was 9 per cent and that was the basic cost just the same as what it cost them to buy their material. The money cost them, that is, to



get the money to do it with, cost them 9 per cent per annum. Now, you can say that the State could have gotten it for 5 per cent, and if they took it out of gas tax it cost nothing and, therefore, if it came out of the gas tax, you shouldn't charge interest during construction, and therefore, applying it to this, you can say the public rate is zero and, therefore, don't charge any interest during construction.

Commissioner Riley: I guess I didn't make it clear what I meant. There is a difference between stock money and bond money. The money they got from stock, the 9 per cent return on that is a pretty substantial return, wouldn't you think?

A. Well, it would be for the Pacific Gas and Electric Company.

Commissioner Riley: Wouldn't it be for a private investor?

A. Not for this concern, just taking the hazard of the business. Now, the measure of the cost of money is the cost of bond money, and you apply that to the entire money included in determining the interest during construction. If you apply Mr. Mitchell's method, instead of [fol. 798] getting 14 per cent you would get about 19 or 20 per cent interest during construction. On his assumption that money cost 8 per cent, the way he figured it, you would get about 19 per cent interest at least for interest during construction, because he assumed something not only unsound but impossible—financing through bonds alone. But that doesn't mean the stock money is not entitled to have interest on that capitalized—that is, unless we have a new method of valuation that has not been tried by this Commission in the past or any valuation experts.

Mr. Rowell: Turning then to your Exhibit 129, cost of money, and referring to page 5, I take it then you have used 9 per cent on the bonds and stock and 6 per cent on the depreciation reserve?

A. In that table at the bottom of page 5.

Q. Yes.

A. Yes. In view of the fact that the original bond money cost 9 and that the new bond money cost 8.95 or thereabouts—that is, new bond money when we consider amortization of bond discount and expense for the entire period—I have assumed that the money that the Company invested from stock and bonds cost 9 per cent and that the money that was obtained through the retirement in a

—money from that, or through depreciation reserve, computed at 6 per cent, must have cost 6 per cent. Now, that is in a sense the method you would follow if you were determining rates for the Pacific Gas and Electric Company or any other utility; you would take preferred stock money, bond money and depreciation reserve money and any other borrowed money, and you would apply the cost of the preferred stock money and bond money, weighted in with [fol. 799] the depreciation reserve money, to get the average cost of money at any one time. And that was what was done in this proceeding, as I understand it, and then they allowed a fair return, which was approximately 1.15 times that cost. Now, what I did here was to apply 9 per cent to the moneys that were raised through bonds of stock.

Q. First I want to ask you, why did you arrive at 9 per cent? I do not find that exact figure in your exhibit.

A. No, the figure came out 9.07 and 8.95, that is, the interest—the cost shown on page 1, sinking fund basis, showed an over-all cost of 9.07 and I used 9 per cent. I believe these cases are not decided to the tenth decimal place or even the third decimal place very often, so you only confuse yourself by getting down into four or five decimal places to try to be exact, when the whole thing is not that exact. I have used 9 per cent, which — think is fairly correct because in one case it shows 9.07 and the other case 8.95, and the periods are about the same. If you use a ratio which is lower than any that has been normally used for a high cost, hazardous company, you come out with that rate of return on that basis. As a matter of fact, when I got through with this, you will not for the rest of the exhibit I use 10 per cent, 9 per cent and 8 per cent for rate of return used in computing the interest, compared with this, which would average about 1.2 per cent higher than that.

Q. Now, in determining the cost of money at 9 per cent, then, you have included not only the current cost, including interest and amortization on the existing bonds, but you [fol. 800] have included the unamortized discount and expense on the prior bonds?

A. Yes; otherwise, the cost of money in the first 10 years must be increased because you amortize it over 10 rather than 20 years.

Q. Was the amount of the new bond issue equal to—

A. No, but there was unamortized bond discount and

expense remaining from the original issue to be amortized over the remaining issue, as I saw it.

Q. Wasn't some of the new issue used to pay off the discount on the old?

A. No, to pay off the premium on the old.

Q. To pay off the premium, I should say.

A. Yes. And that is why I deducted it, because the net amount of cash on the new basis was less.

Q. What the Company needs to accrue now is a sufficient amount to pay off the new bonds at their maturity?

A. How do you mean by that, as cash?

Q. Needs to accrue in cash, in order to meet the maturity of the bonds.

A. Oh, yes, that is true, as far as the cash is concerned.

Q. Turning to Exhibit 132, Mr. Ready.

A. Yes.

Q. And to Table 4 of that exhibit. Take the year 1938, for example.

A. Yes, I have it.

Q. And refer to your Federal income taxes. Was that amount your estimate of income taxes payable on the 1938 estimated revenue?

A. No.

Q. Or 1937?

A. 1937.

Q. And is that true throughout the years?

A. Yes. There is a lag of a year. I explained, I think, the fact that in 1948 it becomes almost as much as the [fol. 801] revenue, because it is the 1947 income that determines the tax, but the Company has in the past and is accounting for the tax on the payment basis rather than accrual basis.

Q. Now, will you turn to Exhibit 133, which is the estimated increase in automobile traffic under the proposed rate reduction as testified to by—

The Witness: I might state—I think it was pointed out to me that there was an error in certain of the figures which I used in preparing this exhibit. There was an error in the figures I had used from Dr. Edwards' exhibit for the stimulation of traffic in connection with the reduction of fares on the Bay Bridge in February, 1937. And instead of there being a stimulation of slightly over 16 per cent there was an increase in February over January of approximately 28½

per cent, part of which would be adjustable from the trend of traffic.

However, I would say otherwise, had I given this matter consideration in connection with the original estimate, I am confident my figure would have been 13 or  $13\frac{1}{2}$  per cent stimulation rather than the 11 per cent. I don't know whether that answers your question, but I feel that the stimulation of traffic to the bridge would approach very closely, if not equal, Mr. Hunter's estimate of  $13\frac{1}{2}$  per cent.

Q. All of your computations made in this exhibit are based upon that curve which you originally had shown on chart 8?

A. That is correct, and that the net result would be a somewhat higher gross revenue and net revenue than previously given. In fact, I went through to see just what those figures might be, if you would be interested in them. That [fol. 802] is, if you took the  $2\frac{1}{2}$  per cent it would be the  $13\frac{1}{2}$  per cent estimated by Mr. Hunter as a possibility, and I think it might approach that, it would represent an equivalent increase in total traffic over that estimated at  $2\frac{1}{4}$  per cent, because your  $2\frac{1}{2}$  per cent would be divisible by one eleven. That, in turn, would be multiplied by the average of 66.8 per cent, because the automobile traffic revenue represented 66.8 per cent of the total, which would give you  $1\frac{1}{2}$  per cent as an increase in gross revenue, and that  $1\frac{1}{2}$  per cent increase in gross revenue would amount to an average of \$18,750 per year or \$191,650 for the ten and a little over years. Now, as to the increase in net, which is the other important item, it takes  $\$1.28\frac{1}{2}$  of gross to equal \$1 of net, on account of the various taxes which this Company would have to pay. That is about an increase—if the total revenue was increased in the next 10 years by \$191,650, the increase in net revenue to the Company would be \$149,000, because 2 per cent of the gross would go to the counties, 4 per cent of the remainder would go to the State and 15 per cent of the remainder would go to the Federal income tax, to the Federal Government in one tax, and for the last 4 years an additional 6 per cent would go to the Federal Government. So that the increase in the net revenue shown in the table for the total company, not for the Carquinez Bridge separately but for the total Company, would be \$149,000 for the remaining life of the franchise, or \$14,550 per year average. I wanted to get it into dollars and cents.



Redirect examination:

Mr. Thelen: Right on that point, referring to the tab [fol. 803] to which you have been referring, which is Table 3 of Exhibit 135, and to the last column, which is column 11 you show at the present time, do you not, a figure there in the red of \$3,996,962?

A. Yes.

Q. And that represents the result of the operation throughout the remaining period of the franchise on the assumption that the rates proposed by Mr. Hunter are made effective?

A. It was the net return below that figure of 10, 9 and 1 for the entire period but assuming that the rates proposed by Mr. Hunter were in effect from January 1, 1938, to the end of the franchise.

Q. As I understand it, as a result of the correction factor which you have just applied, you have a figure of \$149,000 odd in the black?

A. That is correct.

Q. And by deducting that \$149,000 from the \$3,996,962 in the red, the net result of the correction of this error would still be to show a figure in the red amounting to approximately \$3,847,000?

A. That is correct.

Q. Now, I have just a few questions dealing with a matter concerning which Mr. Ready testified once before. Have you given consideration, Mr. Ready, to the matter of items of cost which it is necessary for the American Toll Bridge Company, as a private utility, to bear, which items are not borne by a public bridge such as the San Francisco-Oakland Bay Bridge?

A. Yes.

Q. Will you proceed in your own way, please, to give the results of your studies on that particular subject?

A. Well, in view of the suggestion by Mr. Hunter that a 50-cent toll applicable to the Bay Bridge might well be applicable to the Carquinez Bridge, I thought it well to set up [fol. 804] an indication of at least those items which the American Toll Bridge Company has to pay and that are not carried by the toll charges of the Bay Bridge. I realize the two bridges are not entirely comparable, and yet when you stop and consider that the Bay Bridge, it is true, cost about eight times as much but is located adjacent to two very large



communities and has the equivalent of practically ten lanes of traffic—could have 11, 9 lanes for automobiles and 2 for trains—compared with a possible 3 lanes on the Carquinez Bridge, it seemed to be worth while to set up, at least for consideration, those costs which the Carquinez Bridge and the Antioch Bridge pay, costs that are not charged against tolls on the Bay Bridge. And for that purpose, and summarizing it in form, I have prepared a statement with a table that summarizes those figures. I might read it. It won't take more than a few minutes.

Mr. Thelen: I would ask that that statement be introduced and marked Exhibit No. 142.

Commissioner Riley: 142 is correct. So received and noted.

(Here follows Exhibit No. 142—pages 1, 2, 3.)

[fol. 805]

#### COMPANY EXHIBIT 142

##### Witness Ready

##### Items of Cost of American Toll Bridge Company not Chargeable to Tolls under San Francisco-Oakland Bay Bridge Operation

The suggestion has been made that the 50¢ toll on the San Francisco-Oakland Bay Bridge be considered as the toll applicable to the Carquinez Bridge. There are certain items of cost incurred by the Carquinez and Antioch bridges which are not chargeable to tolls in the case of the Bay Bridge and it is important to keep this fact in mind in considering the applicability of the 50¢ Bay Bridge toll to the Carquinez and Antioch bridges.

The arrangements between the California Toll Bridge Authority and the RFC provide that the operating and maintenance expenses of the Bay Bridge are to be paid out of gasoline taxes so that all of the revenue is applicable to payment of interest and amortisation of bonds. The Bay Bridge, having been built by a State authority, is free from all local and Federal taxes, which amount to relatively large sums in the case of the American Toll Bridge Company.

The attached table shows (Item 1) the estimated gross revenue under present rates for the period 1938-1948, inclusive, and the average revenue per year, based upon Exhibit

No. 132. There is also set up the item of Costs of the American Toll Bridge Company not required to be met by toll on the Bay Bridge. These charges the American Toll Bridge Company has to pay out of toll receipts, and they include:

- (1) Operating and Maintenance Expenses (which on the Bay Bridge are charged against the gas tax).
- (2) Local, County, ad valorem and gross revenue taxes.
- (3) State franchise taxes.
- (4) Federal Income taxes.

In addition, the retirement of the costs of the bridges is limited to about 20½ years, compared with the period which may be taken at 40 years for the Bay Bridge, although the estimates contemplate retirement of bonds of that bridge in a somewhat shorter period of time. This latter item accounts for an annual cost of \$142,771, and a total payment of \$1,460,047 within the remaining period in excess of what would be necessary under a 40-year amortisation period.

It is to be noted in the table that if the American Toll Bridge Company's bridges were relieved of costs not chargeable to tolls, as in the case of the Bay Bridge, costs amounting to \$621,932 per year or an approximate total of \$6,360,000 could be eliminated, thus reducing the required revenue by 36.9%, which would make possible rates considerably lower than those on the Bay Bridge. This would involve loss in revenue to the counties Contra Costa, Solano and Sacramento, totaling \$1,147,577, a loss to the State of \$337,756 in franchise taxes, and a reduction of \$1,662,698 in Federal income taxes from this source, during the remaining period of the franchise. In addition, the money available from the gas taxes for other purposes would be reduced by more than \$170,000 per annum, or over \$1,750,000.

[fol. 806] Reversing the process, the costs to be incurred by the American Toll Bridge Company's bridges during the remaining period of its franchises—if the 50¢ toll suggested by Mr. J. G. Hunter was established—would exceed those applicable under conditions comparable with those of the San Francisco-Oakland Bay Bridge, by more than \$5,100,000. If this amount were added to the revenue based on Bay Bridge tolls (\$12,776,604 under proposed "Hunter" tolls) a total of approximately \$17,900,000 would result, which is in excess of the estimated revenue under present rates.

[fol. 807]

**Costs Incurred by the American Toll Bridge Company not Involved in  
San Francisco-Oakland Bay Bridge Tolls—1928 to 1948**

**Present Tolls**

	<b>Total</b>	<b>Average per Year</b>
(1) Gross Revenue.....	\$17,238,957	\$1,685,714
(2) Items of Charges not met from tolls on San Francisco-Oakland Bay Bridge:		
(a) Operating and Maintenance Expense charged to "Gas Tax".....	1,752,112	171,331
(b) County Taxes:		
Ad valorem.....	804,500	78,668
2% Gross Revenue.....	343,077	33,548
<b>Total</b> .....	<b>1,147,577</b>	<b>112,216</b>
(c) State Franchise Tax.....	337,756	33,027
(d) Federal Income Tax.....	1,662,698	162,587
(e) <b>Total (b, c, d)</b> .....	<b>3,148,031</b>	<b>307,830</b>
(f) <b>Total Above: (a, e)</b> .....	<b>4,900,143</b>	<b>479,161</b>
(g) Depreciation Annuity Required less same on 4% Sinking Fund—40 yrs....	1,460,047	142,771
(h) <b>Total: (f, g)</b> .....	<b>6,360,190</b>	<b>621,932</b>
(3) Gross Revenue less Costs incurred that would not be incurred on Bay Bridge basis.....	10,878,767	1,063,782
(4) Per Cent: (1) + (3).....	6.31%	6.31%

[fol. 808] Q. As I understand it, then, Mr. Ready, you draw attention in this exhibit to important items of cost which it is necessary for the American Toll Bridge Company to stand but which are not stood by the San Francisco-Oakland Bay Bridge?

A. That is correct.

Q. Among those items, as I understand it, you include, first, the entire subject of operation and maintenance expenses, because these expenses are all paid by the gas tax, as far as the San Francisco Bay Bridge is concerned?

A. That is correct.

Q. And you include local, county, and valorem and gross revenue taxes, state franchise taxes and Federal income taxes and then, as I understand it, you draw attention to the very important item of the difference in period of time during which the bonds have to be amortized?

A. That is correct.

Q. And then are there other items?

A. No, those are the items which this bridge pays out tolls, that the Bay Bridge does not pay out of toll. shows 36.9 per cent of the revenue under present rates the next 10 years goes to items of cost which are not incurred by the Bay Bridge, and that does not involve question of rate of return, that is, it does not consider question of the rate of return at all.

Q. In other words, you have not gone into the fact that has been possible for the public authorities to get bonds at a lesser cost than is possible for a private concern?

A. No, those bonds cost about  $4\frac{1}{2}$  per cent as compared with the higher cost. But not attempting to give a complete [fol. 809] answer to the question, I thought it was well that the Commission have before it an indication of some reasons why the 50-cent toll on the Bay Bridge might not be applicable to the Carquinez or Antioch Bridges. That in the next 10 years, if the present rates were to continue this bridge would have to incur about \$6,360,000 more than it would have to incur were the bridge treated in the same way as the Bay Bridge. The State would be out a third of \$1,000,000 of income if the bridge were treated on the basis of the Bay Bridge, the counties would be out over \$1,000,000—\$1,147,000—and, of course, the Federal Government, which is something different, would be out about \$1,662,000 from this source.

Mr. Thelen: That is all we have, Mr. Commissioner.

Commissioner Riley: Would you like to brief this, Mr. Thelen?

Mr. Thelen: If it were before any tribunal which has less experience and is less intelligent than this one, I would like to write a brief; but it seems to me before a Commission of this character it is a work of super-arrogation for any lawyer to write a brief and so, as far as I am concerned I am willing to submit it without writing a brief. Of course if Mr. Rowell wants to write one, I may have a few comments to make.

Commissioner Riley: What is your desire, Mr. Rowell?

Mr. Rowell: I would be very happy to receive a brief from Mr. Thelen, but I think it is unnecessary unless you desire to file one.

Commissioner Riley: Well, whatever your pleasure may be. Is the case ready for submission?

[fol. 810] Mr. Thelen: We are ready to submit the case without the filing of a brief.

Commissioner Riley: It is submitted.

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[fols. 811-812] Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 813] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME—Filed December 24, 1938

It is Hereby Ordered, good cause having been shown, that the time within which the above entitled case may be docketed and the record thereof filed with the Clerk of the Supreme Court of the United States be and the same is hereby extended to and including January 28, 1939.

Dated at San Francisco, California, this 19th day of December, 1938.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fols. 813½-814] [File endorsement omitted.]

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[fol. 815] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME—Filed January 25, 1939

It is Hereby Ordered, good cause having been shown, that the time within which the above entitled case may be docketed and the record thereof filed with the Clerk of the Supreme Court of the United States be and the same is hereby extended to and including February 27, 1939.

Dated at San Francisco, California, this 24th day of January, 1939.

Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 815½] [File endorsement omitted.]



## [fol. 816] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO  
RELY AND OF NECESSARY PARTS OF RECORD—Filed February  
25, 1939

Appellant in the above entitled proceeding intends to rely therein on each point set forth in its Assignment of Errors.

Appellant represents that it is necessary for the consideration of this cause that all of the record filed in this Court be printed, except those portions thereof stipulated to be omitted in the Stipulation Covering Printing of Record between the parties, filed concurrently herewith, provided the Clerk, in printing the Transcript of Record, insert in lieu of the matters omitted the explanatory notes appearing in said Stipulation; otherwise, the entire record should [fol. 817] be printed.

Dated at San Francisco, California, this 16th day of February, 1939.

Max Thelen, Attorney for Appellant.

Due service and receipt of a copy of the above Statement is hereby admitted this 16th day of February, 1939.

Ira H. Rowell, Roderick B. Cassidy, George E. Howard, Attorneys for Appellees.

## [fol. 818] STIPULATION COVERING PRINTING OF RECORD

It is hereby stipulated by and between the parties to the above entitled cause that the whole of the record on appeal in said cause shall be printed, except the following portions thereof:

1. Præcipe Item 3—Order of Supreme Court of California granting temporary stay of decisions and orders of Railroad Commission.

Insert the following note in lieu thereof:

“Order of Supreme Court of California granting temporary stay of decisions and orders of Railroad Commission, filed on February 25, 1938, omitted in printing.”

2. Præcipe Item 4—Suspending bond on temporary stay.  
[fol. 819] Insert the following note in lieu thereof:

"Suspending bond on temporary stay, approved by the Supreme Court of California and filed on February 25, 1938, omitted in printing."

3. **Præcipe Item 5**—Order to show cause why operation of decisions and orders of Railroad Commission should not be stayed or suspended during pendency of writ of review.

Insert the following note in lieu thereof:

"Order to show cause why operation of decisions and orders of Railroad Commission should not be stayed or suspended during pendency of writ of review, filed February 25, 1938, omitted in printing."

4. **Præcipe Item 6**—Notice of application for stay and suspension of decisions and orders of Railroad Commission.

Insert the following note in lieu thereof:

"Notice of application for stay and suspension of decisions and orders of Railroad Commission, filed February 25, 1938, omitted in printing."

5. **Præcipe Item 7**—Affidavit of service.

Insert the following note in lieu thereof:

"Affidavit of service of copies of petition for writ of review and other specified documents, filed on February 28, 1938, omitted in printing."

6. **Præcipe Item 8**—Order resetting hearing on order to show cause and extending order granting temporary stay of decisions and orders of Railroad Commission.

Insert the following note in lieu thereof:

[fol. 820] "Order of Supreme Court of California resetting hearing on order to show cause and extending order granting temporary stay of decisions and orders of Railroad Commission, filed on March 2, 1938, omitted in printing."

7. **Præcipe Item 12**—Order staying and suspending decisions and orders of Railroad Commission pending writ of review.

Insert the following note in lieu thereof:

"Order of Supreme Court of California staying and suspending decisions and orders of Railroad Commission pending writ of review, filed April 6, 1938, omitted in printing."

8. **Præcipe Item 13—Suspending bond during pendency of writ of review.**

Insert the following note in lieu thereof:

"Suspending bond during pendency of writ of review, filed April 6, 1938, approved by the Supreme Court of California, omitted in printing."

9. **Præcipe Item 24—Bond of American Toll Bridge Company.**

Insert the following note in lieu thereof:

"Supersedeas bond on appeal approved, and to operate as a supersedeas, and filed October 28, 1938, omitted in printing."

10. **Præcipe Item 25—Citation.**

Insert the following note in lieu thereof:

"Citation, with statement directing attention to Rule 12, Paragraph 3 of Rules of Supreme Court of United States, with admission of service endorsed thereon, filed on October 28, 1938, omitted in printing."

11. The original exhibits described in Item 29 of said Joint Præcipe and Stipulation and certified to separately by the Clerk of the Supreme Court of the State of California.

It is further stipulated that all verifications may be omitted in printing.

Dated at San Francisco, California, this 16th day of February, 1939.

Max Thelen, Attorney for Appellant. Ira H. Rowell,  
Roderick B. Cassidy, George E. Howard, Attorneys for Appellees.

[fol. 822] [File endorsement omitted.]

Endorsed on cover: File No. 43,189. California Supreme Court. Term No. 704. American Toll Bridge Company, appellant, vs. Railroad Commission of the State of California, et al. Filed February 25, 1939. Term No. 704. O. T., 1938.



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